United States Court of Appeals

for the Second Circuit

APPENDIX

75-7663

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 75-7663

AJAX HARDWARE MANUFACTURING CORPORATION

Plaintiff-Appellant,

-v.-

INDUSTRIAL PLANTS CORPORATION

Defendant-Appellee.

On Appeal From The United States District Court
For The Southern District Of New York

JOINT APPENDIX

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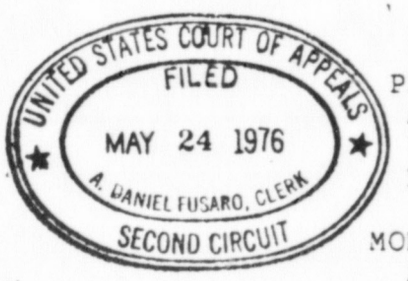

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

AJAX HARDWARE MANUFACTURING CORP.,

Plaintiff,

-against- : 69 Civ. 1900

INDUSTRIAL PLANTS CORP.,

Defendant.

Before:

HON. RICHARD H. LEVET,

District Judge

New York, April 17, 1975

APPEARANCES:

POLETTI, FREIDIN, PRASHKER, FELDMAN & GARTNER, Esqs.,
Attorneys for Plaintiff,
By: MURRAY GARTNER, Esq., of Counsel

MONASCH, CHAZEN & STREAM, Esqs.,
Attorneys for Defendant,
By: ARNOLD STREAM, Esq., of Counsel

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THE COURT: I am going to proceed by question and answer.

Mr. Gartner, what is the reported condition of this Mr. Lewis?

MR. GARTNER: The reported condition is that he has a cardiac condition which is under treatment by a doctor who, as I understand it, sent a letter. The prognosis is that he must remain under treatment for several weeks. The doctor is hopeful that around the middle of May he will have a better idea.

THE COURT: Can you get a doctor's certificate? Is there some other method?

MR. GARTNER: It is on the way. It is in the mail.

THE COURT: Assuming that there is some trouble, why do you need him here at all?

MR. GARTNER: He is the central witness, your Honor.

THE COURT: Tell me what he is going to deal with in his testimony.

MR. GARTNER: He was the president of the Ajax Company.

THE COURT: What else other than being president?

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MR. GARTNER: If your Honor will allow me --

THE COURT: I will if you go right ahead and tell me what I want to know. I don't want any sidestepping.

MR. GARTNER: It is important to say he was the president.

THE COURT: Unless he has some knowledge --

MR. GARTNER: Of course he has knowledge. He was engaged in the correspondence.

THE COURT: Did he have any personal conversations?

MR. GARTNER: Yes, he did.

THE COURT: Isn't it covered by the correspondence?

MR. GARTNER: No, it is not.

THE COURT: You say it isn't?

I thought from a reading of the papers that he was just going to testify about some letters.

MR. GARTNER: No, he had conversations.

THE COURT: What is he going to testify to generally, I'll put it that way; about what conversations and with whom is he supposed to be able to testify?

MR. GARTNER: Your Honor imposes too great a burden.

THE COURT: No, I don't. If you don't want to answer my questions you need not.

MR. GARTNER: Of course I want to. You immedi-

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ately start to attack before I even come into the room.

THE COURT: No, I don't. I am just attempting to lead you in the right paths. I don't want any more of this or I am going to deny your application forthwith.

MR. GARTNER: If your Honor will give me a moment --

THE COURT: All right, think about it. Take five minutes if you want. Tell me definitely the area about which you propose to have his testimony.

MR. GARTNER: Mr. Lewis will testify about the conversations which occurred with the --

THE COURT: With whom?

MR. GARTNER: -- office of the defendant.

THE COURT: Which officer? What is his name?

MR. GARTNER: The vice president, Sidney Kreiser, and I believe --

THE COURT: What does the conversation relate to?

MR. GARTNER: The conversation relates to the arrangement which had been made with Mr. Thaler, another officer of the corporation, the defendant corporation. It was made between Mr. Thaler and Mr. Klein, Howard Klein, who is an officer of the plaintiff corporation.

THE COURT: Was Mr. Lewis there when that

conversation took place?

MR. GARTNER: He spoke with Mr. Kreiser following the arrangement which had been made with Mr. Klein.

THE COURT: Isn't the basic testimony -- I am going to interrupt whenever I see fit in order to get the facts out.

Isn't it true that the basic conversation was not with Lewis?

MR. GARTNER: The conversation setting the terms of the contract was not with Lewis, it was --

THE COURT: Who was it with?

MR. GARTNER: With Mr. Klein.

THE COURT: Who is Klein?

MR. GARTNER: Mr. Klein was the executive vice president of the plaintiff corporation at the time.

THE COURT: If you bring him on I don't see why you need Lewis, counselor.

MR.GARTNER: I said he was the executive vice president. He is not now.

THE COURT: Was he at the time?

MR. GARTNER: Yes, he was.

THE COURT: It is more important as to what he was then than what he is now, counselor.

MR. GARTNER: Mr. Klein is on his way to Europe.

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THE COURT: I don't care. Get your witness here.

MR.GARTNER: He is not my witness. He is not under my control.

THE COURT: You can subpoena him.

MR. GARTNER: No, your Honor. We took his deposition.

THE COURT: Why do you need him anyway if you took his deposition?

I want to hear your adversary.

MR. GARTNER: Your Honor hasn't allowed me to finish. There are many more facets to this case.

THE COURT If you have anything more to say, say it.

MR. GARTNER: There are many more facets than the basic case.

THE COURT: You may go on. There is no trouble now. Will you please go ahead?

MR. GARTNER: Your Honor, after the initial arrangement was made there were conversations between Mr. Lewis and Mr. Kreiser.

THE COURT: About what?

MR.GARTNER: About changing that arrangement, and that is one of the principal --

THE COURT: What were the changes?

MR. GARTNER: The suggestion was made that the defendant would guarantee the price of these -- of this equipment and would buy the equipment at any time at a certain specified price.

THE COURT: Does that have anything to do with the issues in this case?

MR. GARTNER: It is one of the principal defenses that is raised here.

THE COURT: Why do you have to get that in?

MR. GARTNER: We have to present in our case the circumstances under which the arrangement was made. We have to be prepared to respond to the rebuttal which we know is coming, your Honor.

THE COURT: By that time maybe we can see -- how about taking the deposition of Lewis?

MR. GARTNER: Your Honor, in addition to the conversations which occurred on or about April 29th or 30th, 1969, when the arrangement was made and the final deal was completed, there then ensued conversations with respect to what the contract called for. There were interpretations by the parties in oral conversations as to what the contract called for.

THE COURT: Would that amount to a hill of beans, actually, in view of the claim we have in the

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beginning?

You are asking for a deferment. This date was fixed by agreement and the record shows that both you and Mr. Stream agreed to it.

MR. GARTNER: I don't want to address myself to that at this time. I want to address myself to the importance of this man's testimony.

THE COURT: You've got to show some importance to it or --

MR. GARTNER: I believe I have. I cannot show importance if every time I show the importance your Honor says "That doesn't amount to a hill of beans." We can't decide the case here.

2 THE COURT: Let me say a word. I don't think that what you have said indicates any material facts relative to the basic contract. That is what I am trying to suggest to you. You proceed and finish. Then I will give Mr. Stream,his opportunity, but you finish first.

MR. GARTNER: The circumstances under which the original contract was entered into are extremely material. There are cases which hold that we are entitled to show the circumstances under which --

THE COURT: I will agree to that.

MR. GARTNER: Mr. Lewis is the one man who

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can testify to the circumstances.

THE COURT: That is an allegation which I have doubt about.

MR. GARTNER: He is the one man who can testify tothe circumstances.

THE COURT: Saying it twice doesn't make it so.

When you have concluded I will ask Mr. Stream to make his statement.

MR. GARTNER: In addition to the conversations which occurred at the time when both parties were trying to define the extent of the contract. Then there came a time when the defendant asked to get paid and a letter was sent to the defendant saying that the plaintiff had not received under the contract what they had requested and the --

THE COURT: That is sort of a tail end, isn't it?

MR.GARTNER: Well, there then ensued conversations to which Mr. Lewis was a party in which certain statements were made by Mr. Kreiser and Mr. Thaler and as a result of that the bill was paid.

Now, this is again one of the principal defenses, that by paying the bill we waived any assertion that the

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contract had not --

THE COURT: Is there any doubt but what you paid it?

MR. GARTNER: No, there isn't any doubt that we paid it, but the circumstances under which it was paid is important.

THE COURT: Is there anything in writing?

MR. GARTNER: Yes, sir, there are letters.

THE COURT: Something in writing which was --

MR. GARTNER: Yes.

THE COURT: -- exculpating the defendant?

MR. GARTNER: Yes, I think so, and there were conversations at that time which are important.

THE COURT: Just finish your statement.

MR. GARTNER: Mr. Lewis also will testify as to the arrangements that were made for selling the machinery, all the efforts which were made with the defendants to make sure that they had complete control over how the machinery was going to be sold.

THE COURT: That the defendants had control?

MR. GARTNER: The defendants had control. They acted as auctioneers as well as appraisers.

THE COURT: Is there any doubt about that? Counsel seems to be shaking his head.

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MR. GARTNER: There is no doubt that they acted as auctioneers, that they had control of the sale and that we were obligated -- after the proceeds of the sale were in we were obligated to pay the bank the money which we had guaranteed.

THE COURT: I don't think that will --

MR. STREAM: It is conceded in the pretrial order.

THE COURT: Finish up so that I wouldn't be said to interrupt you again.

MR. GARTNER: I am suggesting, your Honor, that you interrupt me. I think in a very, very brief form that is what Mr. Lewis will testify to.

THE COURT: You are through with your statement?

MR. GARTNER: At this moment, yes, your Honor.

THE COURT: Well, this is the only moment. This is the moment for the determination which rests on me.

Now, Mr. Stream, will you explain what you want to?

MR. STREAM: Mr. Gartner called me early this week and told me a totally different story. He said he wanted an adjournment of two weeks because his experts were not available. I told him that I would be perfectly willing to let him take the depositions of those people immediately,

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waiving notices of any kind. He said he would take it on advisement. This is the first time I heard the two-week adjournment having to do with somebody having a heart murmur.

MR.GARTNER: I want to make clear that it had nothing to do -- the two things are --

THE COURT: You can reply, but I am not going to have you interrupt.

MR. STREAM: When your Honor chastised my firm on the 6th of March for requesting a postponement from 10 in the morning until 2, I took seriously what was said, that if we were not ready on Monday or if the plaintiff wasn't ready, the case would be dismissed. If the defendant was not ready there would be a default judgment. I cancelled a trial and rescheduled my vacation for the third week in May. I brought my client back from Europe to be ready on Monday. I am ready to try this case. I expect that your Honor will heed his own mandate.

THE COURT: Will you address yourself to the necessity or lack of it of Lewis being here?

MR. STREAM: Your Honor, every letter that Lewis ever wrote is a conceded document to be received in evidence.

THE COURT: Is that in writing?

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MR. STREAM: All the exhibits --

THE COURT: -- in the pretrial order?

MR. STREAM: There is no question of authenticity of any of the correspondence. The so-called loan agreements that counsel is talking about with the bank are conceded documents. They will be marked in evidence. There is no dispute that the defendant conducted an auction and there is no dispute that the proceeds were insufficient to pay the amount of money which the plaintiff had loaned to this company. That is not the issue in this case.

The issue in this case --

THE COURT: Is what the contract was.

MR. STREAM: Exactly, sir, and that contract is before this Court. There is no need in the world to have Mr. Lewis here. Mr. Klein's testimony was taken at their instance and request by written interrogatories and it is complete.

If this case was not tried on Monday, I myself, because I have changed my plans again, couldn't possibly be ready before June, and I think that is wrong. I think that is completely wrong.

THE COURT: Is there anything else you want to say?

MR. STREAM: No, your Honor.

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THE COURT: Do you want to reply to anything?

MR. GARTNER: Yes, your Honor, I do. In the first place this heart condition which I just learned about last night is not something that I knew about when I talked to Mr. Stream before. It is true that we have had and we continue to have difficulty with the two expert witnesses. I talked to Mr. Coyne about that several times.

THE COURT: What is the total now with them?

MR. GARTNER: I talked to Mr. Coyne about that several times.

THE COURT: You are not asking an adjournment because of them, are you?

MR. GARTNER: No.

THE COURT: You are asking it now because of Lewis.

MR. GARTNER: No. Your Honor, both courses are present, but the Lewis conditions of health is the supervening reason. The point is, your Honor, that the two expert witnesses will not be available until the 23rd and the 24th and --

THE COURT: Of what?

MR. GARTNER: Of next week. Next week. And that is the reason why I initially asked for the trial to be

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adjourned one day, so that we would not have a hiatus of one day in the middle of the trial. I knew your Honor would not look upon that with any favor. That was denied.

MR. GARTNER: Immediately it was denied and I called Mr. Lewis and told him to come here because the trial was scheduled to begin on the 21st, as I told him five weeks ago it would, and there was no indication up until that time that there was any medical problem. I believed that he would be present here on the 21st. He had been undergoing tests for this heart condition at the Cedars of Lebonon Hospital Cardiac Center and he is presently a patient at that center as well as his own personal physician. Their professional medical opinion is that he cannot come.

The last time I brought a witness here from out-of-state under conditions similar to that he had a heart attack and I am not going -- I am not and I cannot insist that Mr. Lewis come here.

In the first place, he is not under my control. He is not an employee of the plaintiff. He is willing to come but not at the risk of his health. He is an absolutely essential witness. The circumstances under which the agreement was made, the circumstances under which

the bills were paid are within his knowledge and his knowledge alone. This case cannot be tried properly without his testimony.

Now, if I had known about his condition before I certainly would have arranged to take his deposition just as I arranged to take Mr. Klein's deposition, as Mr. Stream concedes. I arranged to take Mr. Klein's deposition on the contingency that he might not be available because he is beyond our control. He has absolutely nothing to do with this case and with the company.

So that there was absolutely no reason to believe that Mr. Lewis would not be present. I cannot control his heart condition.

I want to say one other thing, your Honor:

We have been prepared to try this case on at least three separate occasions.

THE COURT: All right, but you both agreed --

MR. GARTNER: Four occasions.

THE COURT: Definitely both sides agreed to this firm date, so don't talk about the past.

MR. GARTNER: I really don't want to stir up your Honor's ire.

THE COURT: It isn't ire, it is just an analysis.

MR. GARTNER: It is not strictly accurate

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that we agreed to this date.

THE COURT: Get that record, Mr. Coyne.

MR. GARTNER: I have the transcript, your Honor. The point is that we were not given an opportunity at that time to find out whether the witnesses were available on those dates.

THE COURT: You should have known that by that date.

MR. GARTNER: We came to court to try the case. We didn't come there with the anticipation that it wouldn't be tried.

THE COURT: I have heard enough, unless you want to add something else.

Anything else, Mr. Stream?

MR. GARTNER: The only other thing I would say, your Honor, is that, as I started to say on three separate occasions we were prepared to try the case: In early March of last year, early October of last year and on March 6th of this year, and on each one of those occasions the trial was adjourned for a long period of time at Mr. Stream's request.

Now, this is the first time that we have asked for the trial to be adjourned when there was a fixed date for it and it is for a very good reason. There is

nothing we can do about it. I, up until last time --

THE COURT: Maybe there is something I can do about it. I wish you to excuse yourselves. I want to look at some papers and consider this matter. I will call you in in a little while.

MR. GARTNER: May I just say, your Honor, the doctor's letter should be here tomorrow. It was sent --

THE COURT: Carry it in tomorrow, if you can get it.

MR. GARTNER: Itwas sent Air Mail Special Delivery and Mr. Lewis sent me a telegram.

(Recess.)

THE COURT: I want to ask you this, Mr. Gartner, for an accurate answer:

Is there any reason why you can't take the deposition of Mr. Lewis?

MR. GARTNER: I don't know. I can't do it today or tomorrow. Now, maybe it can be done. I have not --

THE COURT: When can you find out?

MR. GARTNER: As soon as I can talk with this doctor.

THE COURT: Can you call him now?

MR. GARTNER: I don't know his name, your Honor.

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I'm getting his letter. I say it is in the mail.

THE COURT: I want you tomorrow to find out if a deposition can be taken and I want you to report here as soon as you find out.

MR. GARTNER: The only thing I would say to that, your Honor, is that this is a jury case and --

THE COURT: I know it is a jury case.

MR. GARTNER: There is a possibility --

THE COURT: I didn't command a jury be present.

MR. STREAM: I don't want a jury.

THE COURT: If you want to waive the jury, then we can do a lot of things.

MR. GARTNER: Your Honor, I think it is important to have live testimony and if we can have --

THE COURT: Maybe it is.

MR. GARTNER: -- if we can have live testimony in a reasonable --

THE COURT: I haven't been convinced that Lewis' presence is necessary. I tell you that frankly.

MR. GARTNER: If your Honor would give me more time because of the documents again I am sure I can persuade your Honor that it is absolutely essential. I don't have the documents with me.

THE COURT: I don't see anything, at least alleged,

which indicated that he would do nothing more than identify some letters.

MR. GARTNER: Wtih all due respect --

THE COURT: That is not so?

MR. GARTNER: That is not so. He is essential to the case.

THE COURT: I am not inclined to give an adjournment under the present circumstances and I don't believe that his testimony is necessary. If it were possible, even though the jury had to be prolonged or the case continued with the jury and you could take his deposition, then I would proceed Monday.

MR. STREAM: My only concern, Judge --

THE COURT: You've got witnesses?

MR. STREAM: I want to know. I can't find out tomorrow at 3 o'clock. I have to know yes or no today. I really have to know today whether I am going to start a trial. I face sanctions here. The Judge threatened to place sanctions on me regarding two witnesses from California. Now you tell me one of them is in Europe.

MR. GARTNER: We haven't pressed that. Please don't make an issue of it. We haven't pressed it and we have tried to accommodate you at every turn. I did not take a default judgment against you. I did not embarrass

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you.

THE COURT: Don't argue about it. Can you go out and call and find out the name of the doctor?

MR. STREAM: I'd like that.

MR. GARTNER: Of course I can do that.

THE COURT: Call California and find out the name of the doctor. Then call the doctor and see if a deposition can be taken. I will withhold determination until I hear more.

(Recess.)

MR. GARTNER: I can't find Mr. Lewis.

MR. STREAM: Pretty sick, if he can't be found.

MR. GARTNER: I didn't say that he was dying, Mr. Stream.

MR. STREAM: I suggest, your Honor, that counsel call up the doctor.

MR. GARTNER: Absolutely incredible.

MR. STREAM: Find out from the doctor whether his deposition can be taken over the weekend. I'll fly out.

THE COURT: That is good enough. If that is done I'll delay the trial.

MR. GARTNER: I'm going to protest.

THE COURT: You can protest. I have to do that, and I am not going to interrupt this case and delay it

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because of a possible necessity. I don't see that there is a necessity to have him here.

MR. GARTNER: We bent over backwards to be fair to the defendant and now, for the first time, when we have a real problem we are being ganged up on, your Honor.

THE COURT: Oh, no.

MR. GARTNER: We are being denied due process. It is not fair to do this.

THE COURT: That is an extreme remark which is out of order.

MR. GARTNER: That is the way I feel about it, your Honor. I think that it is completely improper --

THE COURT: You have your remedies.

MR. GARTNER: -- to insist that a man be available --

THE COURT: I am not insisting that he come at all, counselor. I am just attempting to proceed with this case, if it is possible to do so and so that there is justice to both sides here actually.

MR. STREAM: I am prepared to fly out to Los Angeles tomorrow morning to take his deposition with no complication, no order and no stipulations, and then come back with it on Monday morning. We can get 24 hour transcription. We are ready to start Monday morning.

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THE COURT: I direct that you call and give information to Mr. Scream this afternoon, if possible, as to whether a definition can be taken and get it from the doctor.

MR. GARTNER: I will, your Honor.

THE COURT: Go ahead and do it. This matter adjourned until I hear further.

MR. GARTNER: All right, your Honor. Thank you very much.

- - -

THE COURT: As I understand it, the report from the doctor says the deposition maybe taken.

MR. GARTNER: In his home provided --

THE COURT: You agree to that?

MR. GARTNER: Provided that he does not experience any stress and strain, at which point he is directed to stop.

THE COURT: That will have to be up to you, gentlemen. I think you can --

MR. CARTNER: We have a motion to present on papers. I have already served --

THE COURT: What is this motion?

MR. GARTNER: A motion for the adjournment, your Honor.

THE COURT: I have already denied this and I will deny this again if I have to. I direct that the proceedings be continued, that is, that you take this deposition. Very well. That's all.

MR. STREAM: May I just clarify for the record, as I understand it, the deposition will be taken tomorrow at 10 o'clock at an address I don't know yet. I would like to have it on the record.

THE COURT: All right.

MR. STREAM: And that there will be an immediate transcript and a copy made available to me on Monday.

THE COURT: That's up to you. That's up to somebody to get the arrangement.

MR. GARTNER: I cannot give any assurances about an immediate transcript. It is now 8:20 in Los Angeles. I have not been able to reach any reporter.

THE COURT: All right. I direct that if possible the arrangement be made so that a transcript maybe obtained. If it's not obtained by Monday, maybe Tuesday. I'm not specifying the date. All right. That's it.

MR. STREAM: Thank you, your Honor.

MR. GARTNER: I would urge your Honor to consider our papers.

THE COURT: I have considered your argument, counsellor. I don't see why I have to consider your papers. However, I will go over it and I shall probably deny it. I have indicated that already.

Is there anything here that you didn't say yesterday?

MR. GARTNER: Yes, there is a good deal that I didn't say.

THE COURT: Have you a copy of this?

MR. STREAM: Yes.

THE COURT: Any different position by you?

MR. STREAM: No, your Honor.

THE COURT: All right. I will look at it. It

would be a remote possibility that I should grant this. That's all, gentlemen.

MR. STREAM: What time Monday morning, your Honor?

THE COURT: 10 o'clock. Room 2703 is the number of the courtroom. It's up on the 27th floor.

MR. GARTNER: Thank you, your Honor.

Have a good weekend.

MR. STREAM: Thank you, your Honor.

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THE COURT: Proceed, then, for the plaintiff, Mr. Gartner, with your opening statement.

MR. GARTNER: Thank you, your Honor.

As the Court has said, what I am about to say to you is not evidence and I will try to give you just a brief outline of what this case is about.

First, it is about a great deal of money. We claim that --

THE COURT: You don't need to mention the claim, counsellor, as to the amount. It makes no difference.

MR. GARTNER: Thank you, your Honor.

The events on which we rely occurred approximately nine years ago and, unfortunately, the two principal persons by whom the corporate plaintiff acted, the two people who were involved in the events about which you will hear, are unavailable --

THE COURT: You may disregard that, members of the jury.

Proceed.

MR. GARTNER: So that you will not hear direct

are put on there; we want to know what you think this machinery is worth, not what the owner of the machines thinks they are worth.

On Monday, Mr. Thaler went to the plant with the list, which was a great help in identifying the machinery, to which on each one; he didn't have to make his own independent list--there were a lot of machines there--and he proceeded to look at each one of those machines.

Now, this is his testimony, which we will read to you: That he proceeded and spent whatever time he had in trying to see whether each of the machines that was on the list was there --

THE COURT: Are there any witnesses here, counsellor?

MR. STREAM: Yes; an official of the defendant, who will be a witness. No other parties or witnesses.

THE COURT: Very well. That's all right.

MR. GARTNER: And he then proceeded to write certain values next to each piece of equipment. He spent the whole day there; one day.

Then, the following day, he called up Mr. Klein in California and he told him that the total of the values which he had determined for all of this machinery was something more than $900,000 and he said that the liquidation value or the forced sale value could not be less than $500,000.

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THE COURT: That's for machinery only, Counselor?

MR. GARTNER: Machinery. There was no request --

THE COURT: No real estate involved.

MR. GARTNER: Yes. Your Honor was mistaken about that, but it's clear that nobody contends that there was any request to value real estate, the plant, the building or the land; it was just the machinery.

And so Mr. Klein said, "Please send us a telegram confirming what you have told me over the telephone because, as you know, we have to rely on it and act quickly and then you can send us your formal appraisal when it's ready in a couple of days."

The following day, on August 17, 1966, Mr. Thaler sent a telegram in which he said that the value of the total machinery was over $900,000 and that under no circumstances could he conceive that the value of this machinery within the next two years would be less than 60 percent of that figure -- 60 percent of $900,000, of course, is $540,000.

One day later, the president of the Ajax Company, Mr. Norman Louis, whose name you have heard, signed a guarantee, a loan and security agreement, with Time & Micro for a loan of $270,000 by September 9th.

The following day Mr. Thaler sent the defendant's

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There was no arrangement made after that for starting up this business which Ajax and Time & Micro had contemplated. They just didn't begin that business and, therefore, subsequently the Time & Micro Company which had not been operating anyhow -- it had not been manufacturing watches during all of this time; it simply was an idle plant -- they folded up and the loan at the bank, of course, became due. Time & Micro had nothing to pay for it except the machinery which it had put up as collateral, and the following year, in 1967, October, the defendant company, which is also an auctioneering company -- Mr. Thaler is their appraiser and they had other people who did auctioneering -- they advertised the machinery for sale, they had an auction sale and they sold it, and to make a long story short --

THE COURT: When was that sale?

MR. GARTNER: October of 1967, your Honor.

-- and to make a long story short, the machinery which was sold at the auction sale brought $144,000. The machinery which was not sold at the sale itself was later sold for $20,000, so that there was only approximately $164,000, less the expenses of the sale which included the defendant's auctioneering fees and legal expenses and other charges, interest on the loan -- there was only that

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In other words, ladies and gentlemen, we intend to prove to you that the defendant delivered the kind of an appraisal which the plaintiff sought and was paid for a fair market value appraisal, and if it did, we are going to ask you to bear in mind, subject to the Court's instructions, that by comparing that fair market value with what amounts may have been realized at an aucion sale in forced liquidation under an auctioneer's hammer, under a distress situation, is something entirely different, and the fact that less money, that even $100,000 came in at that forced sale 14 months later in no way diminishes the validity of an appraisal intended for a totally different purpose, in-place,on-site operating full fair market value appraisal, and that the defendant has no business attempting to convert that appraisal into a vehicle to hold anybody liable--

THE COURT: You mean the plaintiff, counselor?

MR. STREAM: I mean the plaintiff. Thank you, your Honor. Anybody liable.

I will suggest to you that the so-called operation haste transaction produced a lawsuit only against Industrial Plants Corporation.

I call to your attention that you will find nothing in the evidence that shows that Ajax even sued

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Time & Micro because it got the note of Time & Micro. It can't sue them.

We are going to find out why. We are sure we will hear why. All it did was sue the most recent appraiser and we don't think he should have done that.

see Dziak v. New York Tank Barge Company, 299 Fed. 2d. 809, 810, Second Circuit, 62.

Get the jurors in, Mr. Clerk.

THE CLERK: We are waiting for one juror.

MR. GARTNER: Your Honor --

THE COURT: There is nothing further to say.

MR. GARTNER: Your Honor, first I would like to hand up the trial brief which I have served on my adversary.

THE COURT: All right. I could have received that earlier. I can't stop and read it now.

MR. GARTNER: I am not asking you to do that.

THE COURT: I will take it. I have it. How much time I can devote to it during the presentation of evidence is another problem but it is here, before the Court.

MR. GARTNER: Secondly, your Honor, I would like to introduce in evidence the telegram and the appraisal --

THE COURT: Whatever you offer, proceed with it. I thought you were going to read the depositions.

MR. GARTNER: Your Honor, I told you this morning that I had no witnesses with which to introduce documents and Mr. Stream said--

THE COURT: Show them to counsel, he will probably consent to it.

MR. STREAM: No, your Honor, the way I view it,

that telegram?

"A Yes, as far as I know."

MR. GARTNER: I have an attachment two, your Honor, and I would like to read that to the jury at this point.

THE COURT: Can't you just have it marked in evidence?

MR. GARTNER: Yes, but I would like also to --

THE COURT: You don't need to read it to the jury now, do you, this minute? Can't you read it later when we get all of them?

MR. GARTNER: Well, I think it's important to read it now.

THE COURT: I don't think it's material to put them in and read them now.

MR. STREAM: In any event, your Honor, I offer to counsel the original telegram.

THE COURT: Take the original, if you have got it. Offer it. Have it marked by the clerk for identification.

MR. GARTNER: Except, your Honor, that there are inkings on this telegram which are not part of the original and I assume that they are not in evidence.

THE COURT: I will ask the clerk to take those out, if possible, by putting something on the paper.

MR. GARTNER: There are underlinings on this tele-

gram.

THE COURT: The underlinings are not a part of it or the other writings.

Are they in ink or pencil?

MR. GARTNER: In red ink.

THE COURT: All right. I will ask you later to have a copy made without that on it. That will cure it, I hope.

Mark it for identification.

XXX (Plaintiff's Exhibit 2 marked for identification.)

MR. STREAM: I consent that it be received in evidence.

_XX (Plaintiff's Exhibit 2 received in evidence.)

MR. GARTNER: I would like to read a segment from this.

THE COURT: Not now, I said, unless you read it with the excisions of what you objected to.

MR. GARTNER: Of course I am not going to read the underlinings, your Honor.

THE COURT: Go ahead and read it, then.

MR. GARTNER: "The plant equipment --"

MR. STREAM: Your Honor, if he is going to read the exhibit, let him read it from beginning to end.

Don't pick a sentence out and read it to the jury.

I object to that.

THE COURT: Let me see it.

MR. GARTNER: I have no objection to reading the whole thing. I thought your Honor objected to that.

THE COURT: I didn't object to anything. Counsel objected, I think, and you, yourself, said there were a lot of things in it that you didn't want to read.

MR. GARTNER: Your Honor, I was talking about the circlings.

THE COURT: I don't know what you said. It doesn't make any difference but there are underlinings.

MR. GARTNER: I don't know how to read underlinings, your Honor.

THE COURT: Well, you are not going to read them at all. Those are out, aren't they? You objected to them.

MR. GARTNER: Yes. They are out, your Honor.

THE COURT: Now, look: You are either going to read this the way it will be until it is excised or you are not to read it until it is excised.

MR. GARTNER: That's the way I intend to read it.

MR. STREAM: Just a second. May I point out to you that that telegram, when it was first marked as an exhibit, had those circles around it. It is an exhibit in its present form.

THE COURT: It should not have been so marked afterwards.

MR. STREAM: It was received as an exhibit in that form and if counsel wants to read it, fine. He doesn't have to say what's ringed by what that exhibit is, it is.

THE COURT: Do you want him to read the part in the rings?

MR. STREAM: I would like him to read the telegram in its entirety.

THE COURT: Was it any different.

MR. GARTNER: That is what I started out to do.

THE COURT: No, wait a minute. Mr. Gartner, I wish you would cooperate somewhat with the Court. I have to direct certain things here and I don't find too much aid in it from counsel.

Now, what was offered at the time, Mr. Stream?

MR. STREAM: The entire telegram was marked as an exhibit for identification and is now to be received in evidence.

It was identified by Mr. Klein as the telegram he received.

THE COURT: Where was it identified? What page?

MR. STREAM: Mr.Klein, in answering the question just put to him --

THE COURT: I see. Question 33?

MR. STREAM: "Is attachment two a true copy of the telegram." and the answer was, "Yes, as far as I know."

THE COURT: All right. It's all admitted.

Now, you read it all, if you want to read it.

MR. GARTNER: If your Honor please --

THE COURT: You don't have to read it, counselor.

MR. GARTNER: I do want to read it but --

THE COURT: Take it and read it.

MR. GARTNER: Let me finish the sentence, please, your Honor. I was ready to offer the telegram which Mr. Klein identified. That is here. He didn't see that telegram.

THE COURT: All right. Mark [illegible] for identification.

MR. GARTNER: And I move that that be withdrawn. It was counsel who presented that to me and now objects to my reading it.

THE COURT: Well, it's marked Plaintiff's Exhibit 2 for identification. Take this back and give it to counsel for the plaintiff and mark the other for identification.

MR. GARTNER: I would like this marked as a Plaintiff's exhibit for identification, please. That is what I started out to do before counsel --

THE COURT: Well, you didn't do it.

MR. GARTNER: He mislead me.

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A R T H U R S I N K L E R, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT TESTIMONY

BY MR. GARTNER:

Q Mr. Sinkler, where do you live?

A 1415 Ridge Road, Lancaster, Pennsylvania.

Q What is your present occupation?

A I am retired and am presently chairman of the board of State College and University Directors for the Commonwealth of Pennsylvania.

Q Before you were retired, what was your job, Mr. Sinkler?

A My last job was president and chairman of the board of the Hamilton Watch Company in Lancaster.

Q Could I ask you, Mr. Sinkler, to raise your voice just a bit?

A I will do so.

Q Thank you, sir.

Q What is your educational background, Mr. Sinkler?

A I was graduated from St. James School in Maryland and from the University of Pennsylvania in 1933.

Q And following your graduation, what was your first job?

down into the technical service and test department.

The technical service and test department differed from timing and casing in that it was attached to the research and design departments of the company. I went to the technical service for a year; then back up to timing and casing for a year, where I was the job boss of one of the operations there. Then back down to technical service and tests in 1938, I believe it was, and in 1936 I was assigned to work with the research and design section on military timepieces and other instruments that we had been told by the War Department then, it's the Department of Defense now, would be needed in the event of an emergency, which in fact did take place when the war was declared in 1941.

In 1941 I was assigned to a specialties assembly department where we assembled, tested and timed all of the timepieces that were required by the Armed Forces.

Q Did you in that period of time, or any later period of time, have jobs in the Hamilton Watch Company which involved knowledge of machinery?

A Well, yes, sir, because in the technical service department where we were working with the design section, it was our job to transfer new designs into the factories through the machines on which those parts were to be made.

THE COURT: I don't quite understand what you mean, Mr. Witness. What does that mean?

THE WITNESS: When the new timepieces, navigation watch, for instance, was designed, it then had to be proven that the designer's piece could actually be made and would work. It was our job to follow the piece through the machine, measure it, be sure it was accurately made, and then insert it into a prototype of the final instrument and determine that it would actually work and come off the machine.

That was then put into production in the factory.

THE COURT: All right.

Q Now, in 1946 did your duties at the Hamilton Watch Company change in any way?

A Yes, sir. The war was then over and I was assigned to a newly formed quality division. The quality division was responsible for the quality of the parts, the inspection of all of them, and the finished product, so that we had to approve all manufactured parts and the finished product before it was delivered.

Q In that job did you become familiar with all the machinery in the Hamilton Watch plant?

A Yes, sir. That job had to because we estab-

lished tolerances and permissible quality levels for all operations, mechanical and otherwise, so that yes, I --

THE COURT: What was your function at that time?

THE WITNESS: I was director of the quality division in charge of the approval of the manufacture of parts and of the approval of the finished product.

THE COURT: What did you have to do with the machinery?

THE WITNESS: Because we had to establish the tolerances with which the machines had to operate, so we had to know what quality level could be expected of a machine before we established the quality limits.

Q Following that job, what was your next job with the Hamilton Watch Company?

A I became director of research in 1950, I believe it was, a job which I held for a very short time.

THE COURT: How short a time?

THE WITNESS: Only for six months, your Honor.

THE COURT: What did you do then? I mean, what did you do during that period of six months?

THE WITNESS: I was then in charge of the research design and technical service that I had worked in before.

THE COURT: With respect to design of what?

THE WITNESS: Watches, sir.

THE COURT: Not machinery?

THE WITNESS: No, sir.

THE COURT: All right.

A The research director's job lasted a few short months.

When the vice-president for manufacturing job opened up and I was moved into it, in which job I then had jurisdiction over all of the research, the manufacturing, development and everything. I was in charge of the factory.

Q As the man in charge of the factory, you were of course -- excuse me --

MR. GARTNER: I will withdraw the question.

Q As the man in charge of the factory, did any of your duties relate to machinery?

A Yes, sir. As vice-president for manufacturing I had to approve the purchase of all machines, all equipment, any changes in the factory.

Q Following your job as vice-president for manufacturing, what did you do for the Hamilton Watch Company after that?

A In 1954 I was named president and chairman of the board of the company and held that position until I

retired in 1971.

Q Where is the Hamilton Watch Company located?

A On the western edge of the city of Lancaster in Pennsylvania.

Q Do you know the Time & Micro Company or the Precision Time Company, as it was called before?

A Yes, sir. It's in Strasburg, only fifteen miles from Lancaster.

Q Are you familiar with that plant?

A Fairly so. In it's early days I became familiar with it when Mr. --

THE COURT: When did you become familiar with it?

THE WITNESS: Your Honor, I believe it was 1959. Mr. Shriro, who was putting --

THE COURT: I just asked you the time; that's all.

1959?

THE WITNESS: Yes, sir.

THE COURT: You tell me.

THE WITNESS: To the best of my knowledge, it was 1959, yes, sir.

Q Now, as president of the Hamilton Watch Company, what were your duties, Mr. Sinkler, with respect to various

areas? If you will, tell us all the areas in which you had some responsibility --

THE COURT: You want all the areas?

MR. GARTNER: Yes, your HOnor. I think it's important.

THE COURT: Well, enumerate them, Mr. Witness.

A As president of the company, we were a small corporation, my jurisdiction extended over the manufacturing, the marketing of the product, the financing of it, the financial operations. Decisions had to be constantly made by me with regard to pricing, expansion, purchases --

THE COURT: Pricing of what?

THE WITNESS: Of the product.

THE COURT: Watches?

THE WITNESS: Yes, sir.

Q Did you have responsibilities connected with the purchase of machinery and of the upgrading of machinery?

MR. STREAM: Objection as leading, your Honor.

THE COURT: Well, I'll allow it.

A Yes.

THE COURT: Just answer yes, Mr. Witness.

THE WITNESS: Yes, sir.

Q What were your responsibilities, Mr. Sinkler, with respect to machinery?

A With respect to the purchase of machinery or request to purchase a new machine, it was submitted to me because it was a capital investment and all capital investments had to be approved by me.

THE COURT: Who submitted them to you?

THE WITNESS: The vice-president for manufacturing.

Q Which was the job you had held before you became vice-president?

A That's correct.

THE COURT: Yes, we know it.

Counselor, you don't have to ask that.

MR. GARTNER: Thank you, your Honor.

MR. STREAM: Objection; leading.

Q In the course of your job as president of Hamilton Watch Company, did you do anything else to familiarize yourself with the watch industry?

A Oh --

THE COURT: Strictly speaking, is it the watch industry or is it machinery now? Make it as definite as you can.

MR. GARTNER: Well, it is watch machinery.

THE COURT: All right. Re-ask, reframe the question.

MR. GARTNER: I don't think it's necessary, your

Honor, because I am interested in the --

THE COURT: Well, how do we know what you are interested in? Ask your question. We don't take them by what you may think about; it's what you say.

MR. GARTNER: Could the reporter read the question?

(Record read)

MR. STREAM: I object to the form, your Honor.

THE COURT: Sustained. I indicated that you should ask it otherwise. You just refuse to do so, apparently, or at least you didn't see any necessity of it.

Go ahead now, please.

Q Mr. Sinkler, in your capacity as president of the Hamilton Watch Company, did you do anything to familiarize yourself with the relationship of the machinery in that industry to the watch industry?

A Well, yes, sir.

The job that I became involved --

THE COURT: Just answer yes. That's all it calls for, yes or no.

Q What did you do, Mr. Sinkler?

A As a member of the fuse committee under the Department of Defense --

MR. STREAM: What was that,sir? A member of what?

THE WITNESS: Fuse. Fuse. Time fuse. Fuse committee.

A -- I visited all of the manufacturing, watch manufacturing plants in the United States as they visited ours, in an effort to find who was best equipped to make the various fuses that were required for Korea.

Q What is a fuse, Mr. Sinkler?

A A fuse is a timing device, like a miniature watch mechanism that arms the shell or a rocket after it has been fired.

Q What is its purpose?

A Its purpose is to keep a projectile safe until it is in the range of a target, to activate it so that it can fire, and in most cases to turn it back off again, if it does not find the target, so that it returns to safe.

It's a timing mechanism that runs from 3/10ths of a second at one end to a minute and a half for a long range.

Q When you say "safe," safe as to whom?

A Well, it's totally inert. It will not explode in the safe condition. When it becomes armed, it is very active and it will fire on contact.

Q Now, you say in your capacity as a member of the United States fuse committee, you visited --

THE COURT: Yes, he said so. Why do you ask him all over again?

MR. GARTNER: I'm sorry, your Honor. I thought I would pick it up again.

THE COURT: It's repetitious.

MR. GARTNER: I thought I would pick up the continuity.

THE COURT: You don't need all those arrangements about continuity with a --

MR.GARTNER: I was not going to ask about the United States plants which he said he was going to visit.

THE COURT: If you think it's relevant, ask it. If there is an objection, I'll have to pass on it.

MR. GARTNER: I hadn't finished the question, your Honor. I'll have to restart it now.

THE COURT: No, you don't have to start all over again.

Ask your question, your next question.

MR. GARTNER: I say I'll have to start my question again that your Honor interrupted.

THE COURT: I said to ask it again. I didn't interrupt you. I told you to go on to another question.

Please do it.

Q Mr. Sinkler, as a member of the United States fuse committee, in addition to the United States plants which you visited, did you visit any other plants?

MR. STREAM: Your Honor, we'll concede that he visited plants all around the world, ifit will save some time.

THE COURT: All right. There you are, sir.

Q Did you visit plants all around the world, Mr. Sinkler, for the purpose of inspecting their machinery and capacity?

A Yes, sir.

Q Mr. Sinkler, would you tell us what your experience is with watch-making machinery?

A My experience with watch-making machinery is in operating it in our factory, in approving it for purchase and by visitation to machine manufacturers in Switzerland and in Japan.

THE COURT: That is watch-making manufacturers?

THE WITNESS: Watch-making machinery. Machinery manufacturers.

THE COURT: All right. Very well.

Q Now, would you tell us, Mr. Sinkler, whether in your various jobs with the Hamilton Watch Company you

had any duties which related to the economics of the watch-making industry in the United States?

THE COURT: Now you are talking about machinery or watches, Counselor?

MR. GARTNER: I am talking about the watch-making industry, your Honor, the economics of the watch-making industry in the United States.

THE COURT: I don't know what that means, Counselor.

MR. STREAM: And I will object to the form. I don't like to interrupt the examination.

THE COURT: Sustained as to form. I don't understand the question.

Q Mr. Sinkler, in your jobs in the watch industry in 1936 to the time that you retired, did you become familiar with the demand and supply of watches in the United States and the sources of their manufacture?

A Oh, very much so. Yes, sir.

Q Would you tell us how you became familiar with those things?

MR. STREAM: I will object to this as incompetent, irrelevant and immaterial.

THE COURT: I don't see any relevance to this, Counselor. Sustained.

MR. GARTNER: Your Honor, if I may --

THE COURT: State it briefly. How is it relevant?

MR. GARTNER: It is relevant to the value of watch-making machinery. If there is no market for the watches --

THE COURT: Reframe the question and maybe you can state a question which is a little more clearer than the other one.

Q Mr. Sinkler, how did you acquire your knowledge with respect to the demand and supply for watches in the United States and their sources of manufacture?

THE COURT: Can you answer that?

THE WITNESS: Yes, sir.

THE COURT: Go ahead.

A I represented our company from 1950 through '54 and the American Manufacturers Association after '54, before the Tariff Commission on many occasions where we had to deal with exactly what you asked -- the supply, the demand, and the availability of them.

Q What is the Tariff Commission to which you referred?

A The U. S. Tariff Commission is the commission in the federal government that has jurisdiction over the

imposition of tariffs, trade and import duties.

THE COURT: Does it recommend the rates?

THE WITNESS: Yes, sir.

Q And you were the watch industry representative to that Commission?

A Yes, sir. After 1954; from then on.

Q Would you briefly describe for us, Mr. Sinkler, the history of watch manufacturing in the United States in the period from 1940 through 1966?

MR. STREAM: Your Honor --

THE COURT: Objected to? Sustained.

This is a broad question you are asking him to answer on a warm afternoon in the federal court, Counselor -- anywhere, any time, the history of watch making.

I don't know what you mean. I'll sustain the objection.

MR. GARTNER: Well, I'll try to refine it, your Honor.

THE COURT: Yes, do refine it considerably.

Q Would you tell us, Mr. Sinkler, how many watch manufacturers there were in the United States in 1966?

A Jeweled lever watches --

THE COURT: Don't name them. The number is what you are called for.

MR. GARTNER: The witness said "jeweled lever watches," which is the type of watch that I am --

THE COURT: All right.

How many of that kind of watch? Let's get down to earth here.

MR. GARTNER: May I reframe the question? I think it will help the Court and the jury and the witness.

THE COURT: Please do.

Q What kind of watches did the Hamilton Watch Company mnaufacture in the United States?

A Jeweled lever watches.

Q What is a jeweled lever watch, as compared with other kinds of watches?

A A jeweled lever watch is the highest quality type watch as opposed to pin lever which is the Timex, Pocket-Ben type of watch.

Q What type of watch did the Time & Micro Corporation or the Precision Time Company make when it was operating?

A Jeweled lever watches.

Q Now, how many other manufacturers of jeweled lever watches were there in the United States in 1966?

A Hamilton, Precision Time --

THE COURT: How many, sir? He didn't ask you to name them.

I am sorry, Mr. Witness, but we have to save time whenever we can and you answer only the question asked.

A There were four.

Q Which were those four?

A Elgin, Bulova, Hamilton and Precision Time.

MR. STREAM: Excuse me, sir. I'm sorry. I didn't catch that.

THE COURT: The reporter will read it, please. Read the answer.

A Elgin, Hamilton, Bulova, Precision Time.

I think that is also referred to as Time & Micro.

Q At the time that the name of Precision Time was changed to Time & Micro, was it manufacturing watches?

THE COURT: If you know.

A I don't know when the -- I know they made some, because I saw them, but when they stopped manufacturing I do not know.

THE COURT: When they made what before?

THE WITNESS: They did make some jeweled lever watches, I know, because they were submitted to me by Mr. Shriro, but when they stopped, I do not know exactly.

Q At the time they were submitted to you by Mr. Shriro, what was the corporation called?

A Precision Time.

Q Were any watches ever submitted to you by Time & Micro Corporation?

A Not to me, no.

Q Mr. Sinkler, in the years just prior to 1966, let's say back to 1960, had there been any other watch manufacturers in the United States of this type of jeweled lever watch?

THE COURT: Other than these four?

MR. GARTNER: Yes.

A Waltham had survived into the '60s.

Q Before the '60s, between the '50s and the '60s, were there any other manufacturers other than those five that you have now named?

A Gruen manufactured a few watches for a very short period, but it didn't --

Q Gruen?

A Gruen in Cincinnati.

Q But Gruen did not survive into the '60s?

A No, sir.

Q As the watch industry representative to the U. S. Tariff Commission, what reports did you make in that period of time -- that is, from --

THE COURT: As to what, Counselor?

MR. GARTNER: If you let me finish, your Honor.

THE COURT: Sure, I'll let you finish. Just go right on.

Q What reports did you make to the Tariff Commission in the years 1950 to 1966 with respect to the state of the watch industry in the United States?

MR. STREAM: Objection. Incompetent, irrelevant and wholly immaterial to this case or to any case.

MR. GARTNER: Your Honor, we are --

THE COURT: Just a minute. Just a minute. I have to rule on these things. They just don't spring forth.

In the present form, sustained.

It may be that the basic facts may have some relation to the demand, but not the way you asked it. His reports may have said all sorts of things. Sustained.

Q How did you, in the period of time from 1960 to 1965, Mr. Sinkler, make yourself knowledgeable about the demand and supply of American-manufactured watches?

A We had to --

THE COURT: No. What you did.

A I, as president of the American Watch Manufacturers Association, filed annually with the Tariff Commission production figures for the U. S. industry, and in 1964, before the U. S. Tariff Commission, I appeared

as witness for the industry in a tariff hearing related to the --

THE COURT: That is not where you acquired the information; that's where you passed it along, wasn't it?

THE WITNESS: You are right, your Honor.

A I acquired it from the U. S. manufacturers and passed it through to the Tariff Commission as their witness.

Q What were the matters which the U. S. Tariff Commission was considering at that time?

A 1964, the question came up whether or not the duties should be negotiated downward at the trade meetings scheduled to be held in Geneva in 1967.

THE COURT: That is the import duties.

THE WITNESS: That's correct, sir.

Q What effect would the negotiating downward of the import duties have on the watch manufacturing industry in the United States?

THE COURT: For what period, Counselor?

MR. GARTNER: In the period of 1964 to 1966.

THE COURT: If the import duties are lowered, the question in effect states, what effect does that have?

THE WITNESS: We testified to the --

MR. STREAM: Objection.

THE COURT: Not what you testified. Answer the question, sir.

A If the duties were reduced, the U. S. manufacture of jeweled lever watches would end. We were going to go out of the manufacturing business.

THE COURT: Go to Switzerland and other countries, perhaps?

THE WITNESS: Yes, sir.

Q As a matter of fact, was there increasing competition from Switzerland and other countries at that time?

A Yes, sir.

Q Where was the competition coming from?

A From Switzerland and watches imported duty-free through the Virgin Islands.

Q The Virgin Islands being a part of the United States?

THE COURT: Yes. Everybody knows that, Counselor.

MR. GARTNER: Well, other parts are not part of the United States, your Honor.

Q Had the Swiss Government taken any position with respect to the raising or lowering of U. S. tariffs between 1964 and 1966?

MR. STREAM: I object to it. It's irrelevant

and immaterial at any time in respect of the issues in this case.

THE COURT: Yes. Sustained.

I assume that the United States can fix its own tariff regulations, even though Switzerland might object.

MR. GARTNER: Yes.

Q Mr. Sinkler, was there some relationship between the United States Tariff Commission and the Swiss Government at that time with respect to tariffs on watches?

MR. STREAM: Same objection.

THE COURT: Sustained.

We'll have a short recess.

(Recess)

THE COURT: You may continue, Mr. Gartner.

CONTINUED DIRECT EXAMINATION

XXX

BY MR. GARTNER:

Q Based on your experience, Mr. Sinkler, as the watch industry representative to the U.S. Tariff Commission, in 1966 what was the state of the tariffs in the United States on jeweled level watches?

A The rates of duty in 1966 were those that were established in 1954 by executive order --

THE COURT: He asked you what the rate was.

THE WITNESS: The rate varied from $2.50 in large sizes of watches to $3.75 in the smaller sizes.

Q What effect did that have on the ability to manufacture watches economically in the United States?

A At those rates we were able to compete with imports in the smaller categories, ladies watches.

Q Were you able to compete with any other categories of watches at those rates ?

A No, sir. The larger watches at the lower rather we had given up manufacturing by 1966.

THE COURT: The higher rates of tariff generally speaking the better it was for the American manufactured watches, isn't that so?

THE WITNESS: That is correct.

Q What was the prognosis for the American market in 1966?

THE COURT: Prognosis as to what?

MR. STREAM: I object to that.

MR. GARTNER: As to their ability to continue manufacturing under the state of the tariff laws at that time and projected.

MR. STREAM: I'll withdraw my objection.

THE COURT: Objection withdrawn.

Can you answer that, if you know?

THE WITNESS: Yes, sir.

The industry had concluded that the tariffs were going to be reduced and had already made plans to stop manufacturing.

Q And as a matter of fact, the Hamilton Watch Company, when did it stop making jeweled lever watches in the United States?

THE COURT: If they did.

A We made the last one in 1967.

Q You stated that you were familiar with the Precision Time manufacturing plant in Strasburg, Pennsylvania. Had you actually yourself visited that plant?

A When it was first opened up, when they moved

into their new building, yes, sir.

THE COURT: What year was that?

THE WITNESS: I believe it was 1969, your Honor.

MR. STREAM: What year? I didn't hear that.

THE WITNESS: 1959.

Q Were you familiar with the machinery which was in that plant?

A Yes, sir.

Q What kind of machinery did it have?

A It had a wide range of watch manufacturing machinery and some general purpose machinery.

THE COURT: Where was this located?

THE WITNESS: In Strasburg, Pennsylvania. That's about fifteen miles East of Lancaster.

Q Where the Hamilton Watch Company was located?

A That's correct.

Q Had you ever seen machinery such as that which was in the Precision Time plant?

A Yes, sir.

Q You had?

A Yes, sir.

Q Where had you seen such machinery?

A We had a lot of it in our own factory and in other factories in the country.

Q What was the origin of a lot of the machinery in your own factory which was similar to that in the Precision Time plant?

THE COURT: I don't know what "A lot of your machinery" means, counselor.

MR. GARTNER: Excuse me. I'll withdraw that, your Honor.

THE COURT: Good.

Q What was the size of the Precision Time plant as compared with the size of the Hamilton Watch plant?

MR. STREAM: Objection, your Honor. Irrelevant.

THE COURT: Sustained.

Q How much machinery did the Precision Time plant have as compared to the quantity of machinery in the Hamilton Watch plant?

MR. STREAM: Objection, irrelevant.

THE COURT: Same ruling.

Q Can you tell us what kinds of machines, specifying their origin, were in the Precision Time plant?

THE COURT: I don't know just what that means.

THE WITNESS: Shall I answer the question?

THE COURT: If you can.

A Yes, sir. It was watch manufacturing machinery almost exclusively of Swiss origin as was ours.

MR. STREAM: Move to strike out the last part of the answer, "as was ours."

THE COURT: Sustained. Granted.

Q Mr. Sinkler, I call your attention to Plaintiff's Exhibit 5 in evidence and Plaintiff's Exhibit 4, and to the statement in Plaintiff's Exhibit 4 which says, "The machinery contained therein is mostly of Swiss manufacture and it is not available to American manufacturers unless they are members of the trust and even then delivery of this type of machinery ranks between two and three years from the date of order."

Can you tell us whether or not that is a true statement?

THE COURT: You better take it in parts, Mr. Witness. There are several parts to the statement.

A In 1966, which is the date of this, the machinery was mostly of Swiss manufacture; that is true.

"It is not available to American manufacturers unless they are members of the trust" is not true. And "delivery of this type of machinery ranges between two and

three years" is not true.

THE COURT: You mean was not true?

THE WITNESS: At that time was not true.

MR. GARTNER: I offer for identification this document.

THE COURT: Let it be marked.

MR. GARTNER: This is a final judgment in the action of the United States of America against the Watchmakers of Switzerland Information Center, Inc.

(Plaintiff's Exhibit 6 was marked for identification)

xxxx

THE COURT: That's a judgment, counselor

MR. GARTNER: Yes, sir.

MR. STREAM: I consent to it.

THE COURT: No objection. Give it to the clerk to mark it in evidence.

(Plaintiff's Exhibit 6 received in evidence)

xxxx

THE COURT: Are you going to read that?

MR. GARTNER: No, your Honor, I am sure you will be glad to know I am not going to read it.

THE COURT: Thank you for small favors.

MR. GARTNER: I'll try to increase the favors as we go along, your Honor.

THE COURT: Very well.

Q I show it to you, Mr. Sinkler and ask you if you will identify that.

MR. STREAM: I don't think so, your Honor. It speaks for itself. It's a court of record.

THE COURT: Sustained. I don't know how he is going to identify it.

A Yes, sir.

MR. STREAM: Unless he is a lawyer.

MR. GARTNER: No. He is not.

THE COURT: Next question.

Q Mr. Sinkler, you say that the statement in Plaintiff's Exhibit 4 that "The machinery contained in the Precision Time plant is not available to American manufacturers unless they are members of the trust" is not true.

THE COURT: Yes, he so testified. Why do you have to ask him a second time?

MR. GARTNER: I haven't asked the question, your Honor.

THE COURT: Well you asked before. At least you elicited it and now you go back again, counselor.

MR. GARTNER: It was the introduction to my question which is --

THE COURT: It's a very long introduction. Go ahead, however, answer it.

Say yes, if that's what you said.

A Yes.

Q On what do you base that statement?

A It is because the consent decree that was issued on February 3, 1965, which is this decree --

Q When you say this, will you please read the number of it, the exhibit number?

A Exhibit 6.

THE COURT: The consent decree did what?

A It removed the restrictions by the cartel in Switzerland on the sale of machinery to anybody who wanted to buy it.

Q And that decree was entered --

A February 3, 1965.

THE COURT: It appears, doesn't it, on it?

MR. GARTNER: Yes.

Q As a matter of fact, even before the decree, was that machinery of Swiss manufacture available to American manufacturers?

A Usually, yes. The strictions had been lifted gradually after World War II.

THE COURT: What were the restrictions?

THE WITNESS: A machine manufacture in Switzerland had to get a license to export.

THE COURT: So there was some withholding or diminution by the Swiss, is that correct?

THE WITNESS: That is correct.

THE COURT: Those were removed, you say?

THE WITNESS: By the action of the consent decree.

Q But Mr. Sinkler, before the consent decree was there any availability of this machinery to American manufacturers?

A Oh, a lot of the machinery was available without restrictions from Switzerland.

THE COURT: How did that get by the Swiss?

THE WITNESS: Your Honor, if we couldn't buy it, we made it in our factory.

THE COURT: In the United States.

THE WITNESS: Yes, sir.

THE COURT: Well, that wasn't Swiss importation, though?

THE WITNESS: As soon as they discovered we could make it, we could then buy it.

Q When was it that they discovered you could make it?

A Shortly after World War II because during the War we had to make a lot of --

THE COURT: He just asked you when; that's all.

Q You say shortly after World War II -- that is shortly after 1945.

A That's correct.

Q All that Swiss machinery was available?

THE COURT: He didn't say that exactly.

A Not all of it.

Q Well, how much of it?

A I would hesitate to guess.

THE COURT: In the first place I don't know what you mean by all of that machinery.

Q Well, Mr. Sinkler, would you look at Plaintiff's Exhibit 5 which is a list of the machinery contained in the Precision Time plant and would you tell us, if you please. how much of that machinery was available in the United States before 1966?

THE COURT: Available here for sale for purchase in the United States?

MR. GARTNER: For purchase in the United States or actually here in the United States installed --

THE COURT: I don't understand your question, I must concede, counselor.

MR GARTNER: I'll try to clarify it, your Honor.

THE COURT: Please do.

Q How much of that machinery was available for purchase from the manufacturers from the Swiss or German manufacturers in the United States? Let's start with that.

THE COURT: What year?

MR. GARTNER: Before 1966 -- between 1946 and 1966.

A At a quick glance most of these were readily available for purchase.

THE COURT: Where could they be purchased? In the United States?

THE WITNESS: Yes, sir.

THE COURT: From American manufacturers?

THE WITNESS: No, sir.

THE COURT: From what source?

THE WITNESS: From Switzerland and they had a representative here in New York, Karl Hirschmann.

THE COURT: All right. Anything else of this witness?

MR. GARTNER: Yes, your Honor.

THE COURT: Well, proceed. It is nearly --

it is after 3:00.

Q Mr. Sinkler, with respect to the so-called trust restrcitions to which there has been reference --

THE COURT: You mean this exhibit here?

MR. GARTNER: Yes.

THE COURT: The exhibit before him, number what?

MR. GARTNER: In Exhibit 4, your Honor.

Q Did those restrictions apply to those machines for fuse manufacturing purposes?

THE COURT: If you know.

THE WITNESS: I know very well, your Honor.

THE COURT: What is the answer then?

A The answer was, yes, they were available for fuse manufacturing.

MR. STREAM: I move to strike the answer. The question was, did the restrictions apply.

THE COURT: Read it, please.

(Record read)

THE COURT: Strike the answer.

MR. GARTNER: I'll rephrase the question.

THE COURT: He is satisfied with the question but the answer is not responsive.

MR. GARTNER: He doesn't like the answer,

all right.

MR. STREAM: That is an unfair comment and I don't think it should be permitted.

THE COURT: No. This is not -- it is not to be considered, members of the jury. But don't be offended by it.

MR. STREAM: That's grandstanding and your Honor doesn't like that.

THE COURT: No, I don't like it.

Q Mr. Sinkler, these machines which you have in front of you listed on Plaintiff's Exhibit 5, were they subject to restrictions by the Swiss manufacturers between 1946 and 1966, if the American manufacturers wanted to use those machines to make fuses rather than watches?

A There were no restrictions on fuses.

Q On those machines to make fuses, is that co-rect?

A That's correct.

THE COURT: That was because of the war situation, primarily?

MR. GARTNER: There was no war situation.

THE COURT: Or defense?

THE WITNESS: No, sir.

THE COURT: What was the reason for it?

THE WITNESS: The only restrictions they had were for the manufacture of watches.

THE COURT: Go ahead.

Q Now, in 1966, Mr. Sinkler, was anybody in the United States buying that machinery for the manufacture of watches?

A No, sir.

Q Was there any market in the United States in 1966 for a watch manufacturing plant containing that machinery in Exhibit 4?

A In my opinion, no, sir.

MR. STREAM: I didn't hear the answer.

A No, sir.

THE COURT: He said, "In my opinion, no, sir."

Q I call your attention to another statement in Plaintiff's Exhibit 4 and I will read where that exhibit says, "In our opinion, manufacturers utilizing most modern high-precision equipment of this nature would pay for premiums over and above the values as established in our appraisal if this equipment was made available to them."

And before I ask the question, I would like you to refer to Plaintiff's Exhibit 5 which shows the

jbjw 15 Sinkler-direct

values established as referred to in Plaintiff's Exhibit 4.

THE COURT: Well, you will have to work that into the question somehow.

MR. GARTNER: I'll rephrase the question, your Honor.

THE COURT: Please do.

Q Plaintiff's Exhibit 4 says, and I quote:

"In our opinion, manufacturers utilizing most modern high-precision equipment of this nature would pay for premiums over and above the values as established in our appraisal if this equipment were made available to them."

And Plaintiff's Exhibit 5 lists the equipment which is referred to in Plaintiff's Exhibit 4 and the values one by one by each piece of equipment and I will ask you, Mr. Sinkler--

THE COURT: You are going to have him treat it one by one?

MR. GARTNER: No, sir, your Honor.

THE COURT: Go ahead and finish your question.

MR. GARTNER: No, sir. I wouldn't impose that upon your Honor. I'll try to give you another small favor. I'll ask it all in one question, in one question, not 600 questions because there are 600 pieces of machinery

there.

THE COURT: All right. Please.

Q Based on your experience with this type of equipment and your knowledge of the watch manufacturing machinery, is that statement true or false?

A The statement is false.

Q Do you know of anybody who in 1966 would have paid for premiums over and above the values listed for the machinery in Plaintiff's Exhibit 5?

A I do not.

Q Do you know of anybody who in 1966 would have paid the values for that machinery that is listed in Plaintiff's Exhibit 5?

A No, sir.

THE COURT: You mean the prices which are listed?

MR. GARTNER: The prices listed.

THE COURT: You better reframe your question, counselor. You said values.

MR. GARTNER: All right. I'll take the court's suggestion. Thank you, your Honor, for your big favor.

Q Do you know of anybody, Mr. Sinkler who in 1966 would have paid the prices, the dollar figures put next to each one of these 600-odd machines that are

listed on Plaintiff's Exhibit 5?

THE WITNESS: Your Honor, may I qualify that answer?

THE COURT: Yes, you may and you should if you think so.

A As to the vast majority of these, that is correct. There are certain general purpose machines which are not exclusively used in watch manufacturing for which that statement does not count.

THE COURT: In other words, some of those figures would be correct on the market at that time, is that so?

Q Now, which general purpose --

THE COURT: Now are you going to go through and ask him to mark them?

MR. GARTNER: Your Honor, there are only a very few of them.

Q Which general purpose machines are you referring to which could have brought that price in 1966 as listed?

A There are no page numbers on this exhibit but I refer to the presses, essentially those, listed beginning -- beg your pardon -- on page 5.

MR. GARTNER: I could give your Honor a copy

of that.

THE COURT: I don't want it. Offer it in evidence, if you want but I am not taking the exhibits.

MR. GARTNER: Just for general purposes.

THE COURT: I'll look at it. Go on. Have you finished your answer?

THE WITNESS: Yes, sir. That's what I had, when I said, as to all of them, no, but as to the majority, yes.

Q Now, let me just for the purposes of the record and for the purposes of the jury's understanding, if you know, Mr. Sinkler, let me ask you whether, with respect to the presses which are listed on page 5, is it your testimony that the dollar figures put next to them are reasonable and accurate figures?

A In my best judgment, yes, they are close.

MR. STREAM: May I have the last question and answer read.

(Record read)

Q Now, as to all of the other machinery and dollar figures set next to them in Plaintiff's Exhibit 5, is it your testimony that there would be no buyer at those prices in 1966?

THE COURT: Whatever all the other things mean.

A I would have to qualify, if I may, your Honor, there may have been some others in there that I may have missed.

THE COURT: Well, there you are.

Q Well, as to all of the Precision watchmaking machinery, Mr. Sinkler.

A Then my answer stands, yes. They are way overvalued.

Q They are way overvalued?

THE COURT: How do we know which ones he is talking about?

MR. GARTNER: Well, your Honor, could we perhaps have a five-minute recess and let the witness mark on the exhibit?

THE COURT: How do you want him to mark it?

MR. GARTNER: With a checkmark, the machines which he considers --

MR. STREAM: I'll concede, to save time, that the witness, if given the chance, would testify that some of the items are overvalued, later on to determine what kind of expertise he has as an appraiser, apart from a watchmaker.

THE COURT: Yes, of course, that is subject to cross examination.

MR. STREAM: That's another story, something else.

THE COURT: What counsel is asking, if you will agree to have these marked some way.

MR. STREAM: Any way he wants.

THE COURT: You and he arrange it later, will you, after the jury leaves.

MR. STREAM: Sure.

MR. GARTNER: Mr. Sinkler will mark all of those.

THE COURT: Yes, I said after the jury leaves.

MR. GARTNER: I just wanted to be sure I understood.

THE COURT: Yes, you understand.

Anything more now, counselor?

You wanted to get him out of here and of course he is subject to cross examination and if there isn't some time for cross, you can't blame Mr. Stream for the delay or the Court.

MR. GARTNER: Your Honor, I am not blaming anybody. I think it is important that this case be tried.

THE COURT: Well, we'll stay here until about 4:30. That's all I will stay.

MR. GARTNER: I think it's important that the case be tried as long as the witness is here.

THE COURT: I may insofar as it is in accord with a reasonable degree of hours for the Court and jury but I won't stay just to accommodate you or your witness.

MR. GARTNER: Thank you, your Honor.

THE COURT: I shall endeavor.

MR. STREAM: Are you finished with the witness?

MR. GARTNER: I need the other exhibit, Mr. Stream.

Q Just one other question, Mr. Sinkler.

In Plaintiff's Exhibit 4 I've already called your attention to the statement that, to our knowledge there is not one existing plant in this country so equipped; that is, with the same equipment as was in the Precision Time plant.

Apart from the Hamilton Watch Company do you know of other plants in the United States which were so equipped?

THE COURT: Or similarly equipped.

MR. GARTNER: Similarly equipped. Thank you, your Honor.

A Yes, sir. Bulova, Elgin and U.S. Times Fuse Facility at Waterbury, Connecticut.

Q With that list in front of you, Plaintiff's Exhibit 5, which shows the equipment at the Precision Time plant, can you tell us what the proportionate amount of that same or similar equipment was in those other plants?

A All of it.

THE COURT: What is it?

THE WITNESS: All of it.

THE COURT: You mean by that that Bulova had the same?

THE WITNESS: Yes, sir. We had it.

THE COURT: Elgin had the same?

THE WITNESS: Yes, sir.

THE COURT: And United States -- what is the other company?

THE WITNESS: U.S. Time, United States Time in their fuse facility in Waterbury, Connecticut.

THE COURT: You say that each of those had the same --

THE WITNESS: Or similar.

THE COURT: Or equivalent, would you say?

THE WITNESS: Yes, or equivalent.

Q And Hamilton Watch also?

A Yes, sir, absolutely.

Q And they each had at least as much as Precision Time, did they not?

MR. STREAM: Objection, leading.

THE COURT: Sustained.

Q What was the proportional relationship in the quantity of equipment that each of those plants had?

A All of them were much larger.

Q And therefore had much more of the same equipment?

A Exactly right.

MR. GARTNER: I have no other questions, your Honor.

THE COURT: All right. Cross examination, now, counselor

CROSS EXAMINATION

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BY MR. STREAM:

Q Mr. Sinkler, are you presently employed?

A I work very hard as chairman of the board but I am not paid for it. If employment means work, yes.

Q What do you do?

A I am chairman of the board of directors of the fourteen state owned colleges in Pennsylvania.

Q What do you do?

A What could I do as chairman of the board? It's the function of our board to establish --

Q What do you do, sir, from day to day in your present work? That's my narrow question.

Do you understand the question, sir?

A No two days are alike. I deal with the Department of Education in Harrisburg. I have meetings with the presidents of the fourteen institutions. I have meetings with their financial men in preparation of budget requests to the state. I meet with the academic deans in response to their request for new academic programs and it is our responsibility that covers a wide range of education.

Q Is that a full-time, full day --

A No, sir. Two days a week.

Q Do you do any appraisal work?

A No, sir.

Q Did you ever do an appraisal of any plant in the United States of America in your whole life? You yourself?

A No, sir.

Q How about Europe? Did you ever do an appraisal of any plant anywhere in Europe in your whole life?

A No, sir.

Q By the way, you said that your degree was a bachelor in engineering, is that what you said?

A English, I said.

Q Where did you get your degree in engineering?

A I do not have one.

Q Do you have a post graduate degree of any kind?

A An academic degree, post graduate, no, sir. I am a certified master watchmaker.

Q You are a certified what?

A Master watchmaker.

THE COURT: They don't turn those out from the United States, do they, in June.

Q Yes, I wanted to get straightened out on your formal academic education and I have it corrected that you have a degree in English, is that correct?

A That's correct.

Q You eneded up -- was it the president of the company?

A Yes, sir.

Q What was the company again?

Q How about Europe? Did you ever do an appraisal of any plant anywhere in Europe in your whole life?

A No, sir.

Q By the way, you said that your degree was a bachelor in engineering, is that what you said?

A English, I said.

Q Where did you get your degree in engineering?

A I do not have one.

Q Do you have a post graduate degree of any kind?

A An academic degree, post graduate, no, sir. I am a certified master watchmaker.

Q You are a certified what?

A Master watchmaker.

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Q Yes, I wanted to get straightened out on your formal academic education and I have it corrected that you have a degree in English, is that correct?

A That's correct.

Q You eneded up -- was it the president of the company?

A Yes, sir.

Q What was the company again?

A Hamilton Watch Company, Lancaster, Pennsylvania.

Q Did it go bankrupt?

A No, sir.

Q What happened to it?

A It was in its last few year divided. The Swiss now own the Hamilton Watch Company and Hamilton Watches and the factory was purchased by the United States government and it is operated as an ordinance facility.

Q It was divided up and sold, isn't that a fact?

A In two pieces, that is correct.

Q Were you there at that time?

A No, sir. I had retired.

Q How many years before had you retired?

A 1971 and the sale was completed in '74.

THE COURT: What did the Swiss get out of it?

THE WITNESS: They got the Hamilton Watch Company, the corporate shell, and the name and all the watch inventories and all the watch employees.

Q You told his Honor and the jury in your direct examination that you had, as the president of the company, certain responsibilities and among them I think you mentioned that requests for the purchase of new machinery had to pass your desk, is that correct?

A Correct.

Q And that you had to okay them, isn't that right?

A Yes, sir.

Q And that was in large measure from the time -- by the way, when did you become president?

A 1954.

Q And you stayed in that office until 1971?

A That's correct.

Q And during those many years as the president of the company, was that the practice generally observed, that is to say, if requests were made for the purchase of new machinery, they came across your desk, right?

A Yes, sir.

Q And they came across your desk with an approval or a comment did they not, of your vice-president, engineering or production, isn't that right?

A That's correct.

Q Was your vice-president engineering or production a licensed engineer, sir?

A Not during all those years.

Q In the latter period?

A Vice-president -- he had an engineering title. I think it was industrial engineering. He was a graduate of John Hopkins and I think it was industrial

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engineering.

Q In any event, am I correct in understanding that you relied upon his, generally you relied upon his judgment as to whether a particular machine was needed or not?

A That's right, of course.

Q And your business was largely administrative, isn't that so?

A Right.

Q And then you got into some kind of, I don't mean that disrespectfully, you became some kind of a government official, quasi official with the tariff business in Switzerland.

You mentioned that and said that you traveled, did you not, around the world looking at plants and factories, isn't that right?

A You used the term "quasi government official."

Q Quasi official, I said. You are a member of a committee?

A It was a fuse committee.

Q Was that the Time Fuse Committee?

A That's correct, sir.

Q And you said, I believe, that you visited the plants to check the capacities of those plants for the purpos

of the Korean War, is that right?

A That's correct, sir.

Q Now, I think you also said something about how you visited the plants themselves, is that right?

A Yes, sir.

Q And you went with engineers, did you not?

A The Fuse Committee was made up of people like me and engineers and others.

Q And what you contributed was not any valuation of the capability of any particular machine but function capability, isn't that so?

A No, sir, that's not correct at all.

Q Well, what?

A I was, before becoming president for vice-president for manufacturing.

Q I didn't ask about that before. I said your trips --

MR. GARTNER: Objection. The witness hasn't finished the answer and I think he should be allowed to answer.

Q I want to know --

THE COURT: Wait a minute. You see you are all balled up. Three of us speaking at once. Now, we'll have to ask the reporter to read the question. If this answer isn't responsive, it will have to go out.

end t3

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MR. GARTNER: Well, there was no objection to it on that ground, your Honor.

THE COURT: He may object. He may move to strike it and it sounded a little unresponsive, but let's find out.

MR. STREAM: I'll rephrase it if your Honor please.

THE COURT: All right.

MR. GARTNER: Counsel asked a question and he didn't --

THE COURT: He doesn't have to go on with it if he doesn't want to.

Your objection is overruled. It must be overruled.

You several times did it yourself. What's sauce for the goose is sauce for the gander.

MR. GARTNER: Yes, sir, your Honor. Thank you.

Q Mr. Sinkler, how many members were there to that committee that you called the time fuse committee of the United States Congress?

A No, sir. The Defense Department.

Q Pardon me?

A The Defense Department, not the United States Congress.

Q All right.

The time fuse committee of the Defense Department of the United States of America; is that a correct description of that committee?

A Yes, sir. That's accurate enough.

Q Just tell me how many members were on that committee.

THE COURT: Just estimate it, Counselor.

A I would estimate eight.

Q And you say that the eight consisted of engineers, among other things; right?

A We were all supposed to be specialists.

Q Sir, my question was did it consist, among other things, of engineers?

MR. GARTNER: Objection. I don't think counsel has the right to interfere with the answer.

MR. STREA I want a straight answer.

THE COURT: He can change the question.

MR. GARTNER: In the middle of the answer?

THE COURT: I don't think we need to get so technical as that.

Now, restate the question. This is the time we lose.

Q I beg you, for the purposes of your own time

and the Court's time --

MR. GARTNER: I object to that. It's not a question and counsel has no --

THE COURT: Disregard the comment, but also disregard the objection, too.

It's overruled.

Q Mr. Sinkler, on this committee of yours, was there or was there not --

MR. GARTNER: I object, your Honor.

Q -- an engineer?

THE COURT: Let him state the question, please, Counselor.

MR. GARTNER: It's contrary to the evidence. It was not the witness' committee.

THE COURT: In any event, I instruct you to wait until your adversary has finished the question before you come into the picture, orally.

MR. GARTNER: Thank you, your Honor.

THE COURT: Proceed.

Well, that's absolutely necessary for the conduct of an orderly trial which I am trying to do.

Q Mr. Sinkler, on your committee, was there or was there not an engineer?

A There is at least one engineer.

Q Now, yes or no -- was there a financially oriented member on that committee?

MR. GARTNER: I object, your Honor.

THE COURT: Overruled. You may object to the form, but not the question.

MR. GARTNER: I object to the form, your Honor.

THE COURT: You didn't state it. You said, "I object."

I'll sustain the objection as to the form.

It may be better wroded, but you didn't object to it at first.

Q All right, sir.

On that committee, in addition to people who were engineers, what other kinds of members did you have making these trips around the world for the Defense Department?

MR. GARTNER: Objection, your Honor, to the form. It's contrary to the testimony. The trips were not being made around the world. These were made to specific places for specific purposes.

THE COURT: It probably is not a recital of the specific testimony, so I have to sustain the objection.

Q I'll try again.

On the committee, what else besides engineers --

and I am looking for categories, sir -- what else besides engineers were represented on that committee?

A I can't tell you what other categories are represented. The committee was supposed to be a committee of fuse experts.

Q Fuse experts?

A That's correct.

Q And had you ever in your life run a plant facility that made fuses?

A Yes, sir.

Q What was the name of that?

A Hamilton Watch Company.

Q I beg your pardon?

A Hamilton Watch Company.

Q That was during which war?

A World War II and during Korea.

Q Now, at that time, sir, and I am talking now about the Korean War, did you have a plant manager? If you did, tell me his name, if you can remember; if you can't, say it, and we'll be done with it.

A Frank Christoffel.

Q By the way, you saw the gentleman sitting here before, Sidney Kriser. Did you know him?

A No, sir.

Q Do you ever recall having seen him before?

A No, sir.

Q Was it at that time, sir, that you became familiar with the supply and demand in the United States?

MR. GARTNER: Objection as to form.

THE COURT: Sustained.

Q Sir, was it at the time of the trips you made in behalf of the Defense Department of the United States that you became familiar with the supply and demand of watches and of watch manufacturing equipment into the United States?

A It was approximately at the same time but the two events --

THE COURT: When was it by years?

THE WITNESS: 1952 through 1954, I think is the time or Korea, that you are talking about.

THE COURT: During the Korean War?

THE WITNESS: Yes, sir.

Q Later in time, you told us that you became a member of the United States Tariff Commission. Is that what it was called?

A No, sir. I appeared before it.

Q And I think you told us that you had become familiar with tariff rates for watches into the United

States; is that a correct statement?

A That's correct.

Q What was that year?

A The first time I appeared before the Tariff Commission was in 1952 as a member of the Hamilton Watch Company's management staff.

Q Just the year, sir.

A 1952.

Q Was that the first time?

A Yes, sir.

Q Then you told us on direct examination that at a certain point in time the tariff rates were between $2.50 and $3.75; right?

A Yes, sir.

Q And you told us that those rates had been the same during what period of time?

A July 1954.

Q To what?

A To 1967, January.

Q What happened in January 1967?

A The rates of duty were cut in half.

Q That had an effect upon the watch industry, didn't it?

A We closed up.

Q When was that?

A 1967.

Q You mean "we," being Hamilton?

A Hamilton, Elgin, and shortly thereafter Bulova, for the manufacture of watches in the United States.

Qualify that more -- jeweled lever watches in the United States.

Q When was that? What month of 1967 was that?

A In January of 1967 President Johnson reduced the duties, cut them by 50 percent.

Q January 1967, President Johnson reduced by 50 percent the tariffs or duties on watches; correct?

A Correct.

Q And as a result of that, you say you closed up your plant; right?

A We stopped manufacturing watches, jeweled lever watches, in Lancaster, yes.

Q What did you do with -- when was that, by the way?

A The last watch was made in the fall of 1967.

Q '67?

A Yes, sir.

Q So that by the end of 1967 you were out of the watch business; right?

A In the United States for manufacturing purposes. We were at --

Q That's enough for the moment, sir. It's the watch business I am talking about.

Did you dismember your plant?

A No, sir. The plant was sold to the Government.

Q In an aggregate sale, or item by item?

A Aggregate sale.

Q Altogether; right?

A Yes, sir.

Q As a unit?

A That's the manufacturing facility was sold as a unit, machines and buildings.

Q In place?

A In place.

Q To be used by the Government right there?

A Yes, sir.

Q You were out of the watch business; right?

A Yes, sir.

Q But the operation continued right there with the same machinery for what further purpose?

A As a Government arsenal for the manufacture of time fuses.

Q That was at the end of 1967, right?

A Well, the sale was not completed for a couple of years.

Q I understand, but you negotiated from then on?

A Yes, sir.

Q You did not take your pieces of machinery and equipment and put them under an auctioneer's hammer, did you?

A No, sir.

Q You did not liquidate the physical assets, did you?

A No, sir.

Q Theyremained substantially intact and in place; is that right?

A Yes, sir.

MR. STREAM: Your Honor, may I have permission to mark these two sets of papers as Plaintiff's Exhibits 1 and 2 for identification.

THE COURT: Hand them both to the clerk.

xx (Defendant's Exhibits A and B marked for identification.)

MR. GARTNER: Can we have a little recess? Mr. Sinkler would like a glass of water.

THE COURT: The clerk can get it now without the recess.

THE WITNESS: Thank you, sir.

MR. GARTNER: I would get it if I knew where to get it.

Q Mr. Sinkler --

MR. GARTNER: Excuse me, Mr. Stream, Mr. Sinkler would like a little rest for a minute.

Q Do you want a rest?

A No, no.

MR. GARTNER: Can you go on?

THE WITNESS: Sure. I get a little dry, I wanted a little water.

MR. GARTNER: All right.

THE COURT: The clerk will get you some water.

MR. STREAM: Here, we will solve your problem. You can use my water.

THE WITNESS: Thank you, sir. If it is not poisoned.

MR. STREAM: I won't answer that.

THE WITNESS: I will risk it.

THE COURT: It is not poisoned.

Q And Mr. Sinkler, it was because of this collapse in duties, wasn't it, that you said during your direct examination that, so far as the machinery and equipment that Time & Micro was concerned, there was no market for the 1966?

MR. GARTNER: Objection, your Honor, just as to

form. It is completely contrary to the testimony.

Q If it is, sir, you tell me.

THE COURT: He can answer it no, if that's so.

Q You tell me if I stated it right. Do you remember saying that in 1966 there was no market for the machinery at Time & Micro?

A That's correct.

Q And that was due in large measure, was it not, to your -- not your but to the fact that there had been a collapse of the duty?

A Yes, sir, it was expected in --

Q I didn't ask you if it was expected. I said, sir, was it not?

MR. GARTNER: Your Honor, could counsel allow the witness to complete his answer? In mid-answer he interrupts.

THE COURT: I think he had.

MR. GARTNER: He had not. Could the reporter read it back.

THE COURT: Yes, all right, let's wait then. Let's all wait.

MR. GARTNER: The witness has not completed his answer.

THE COURT: Well, maybe he had, maybe he had not. Read the question and the answer as far as he went and then

he will complete it or say that it ended, one or the other.

(Last question and answer read.)

MR. STREAM: That's right, sir, I didn't --

MR. GARTNER: He was in the middle of an answer.

THE COURT: Maybe he was but what he talked on was not a response. You may move to strike out the latter part.

MR. STREAM: I so move, your Honor.

THE COURT: Granted. Proceed.

Q Now, Mr. --

A Your Honor, sir?

Q Mr. Sinkler, Mr. Sinkler may I have your attention?

A Yes, sir.

Q I don't care right now about expectations or no expectations. I want you to tell me this single answer if you can: When you testified during direct examination -- and you tell me if I am wrong about what I say you said -- when you testified during direct examination that the letter which Mr. Thaler write and which was read to you was untrue because nobody would buy machinery, there was no market for machinery in 1966, and you made that statement, did you not, sir?

A Yes, sir.

Q That statement was in large part due to the fact that when you made that statement under oath, you were referring to the collapse of the duty that year, isn't that so?

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A No, sir.

Q It was not due --

A The anticipated collapse of the duty.

Q In 1966?

A Yes.

Q That was the reason?

A That's right.

Q That you couldn't have sold that at auction, right?

A That's correct.

Q Right.

Is it your testimony, sir, under oath that there was nobody in the United States in 1966 that would have bought that plant intact as a going operation for other high precision manufacturing purposes such as the work done at Hamilton in 1967?

A I know of none.

Q You know of none?

A Yes, sir.

Q I didn't ask you if you knew of any. I said is it your testimony that it could not have been done?

A I don't think I said that.

Q I didn't ask you whether you said it. I am asking you now.

A Well, no.

Q The answer is it could have been sold intact as yours, isn't that a fact?

A No, I did not say that.

Q You don't know?

THE COURT: He did not ask you what you said.

A He asked me if it could be sold intact to somebody, and my answer is I do not know.

Q All right, you don't deny that it could have been sold in 1966 intact on sight as a going operation with the aggregation of machinery and equipment that was found there; isn't that so?

A I don't know.

Q You don't know?

A I don't know.

Q Yours was sold in that fashion in 1967, wasn't it?

A Yes, sir, to the government.

Q All right.

What was the tack-on, yes, sir, what?

A To the government?

Q To the government. All right. And used by the government thereafter, right?

A Yes, sir.

Q And when you testified, sir, during direct examination that nobody would have paid premiums for most of the

items on the list, you meant, did you not, for any particular item as an item; isn't that so?

A Yes, certainly.

Q You meant that if somebody wanted to buy a press, per se, second-hand, they wouldn't have paid the price shown in the exhibit you looked at; isn't that right?

A I specifically excluded the presses from that statement.

Q I see. But all the others?

A Yes, sir.

Q Right.

Sir, based upon your broad experience in this entire vast field which has captured your attention throughout most of the years of your life, you say that you came in contact from time to time with Hirschmann Corporation, right?

A I think it was Carl Hirschmann Corporation. I am not sure it was incorporated. Carl Hirschmann was the salesman.

Q Did you ever hear of Martin Kaefer?

A I don't recollect it, sir.

Q The company was located in Long Island, was it not, sir, as you recall it?

A I believe so, yes.

Q And they were a distributor throughout most of the

1960's and even before, of high precision Swiss watch equipment; isn't that right?

A That's correct.

Q Watch making equipment, machinery making equipment; isn't that right?

A That's correct.

Q By the way, that list that you were looking at, may I have it, Mr. Gartner? Is it on your desk?

A Exhibit 5?

Q Yes, is an appraisal?

A Or this?

Q This one, sir, thank you.

A That's the same list I think. It is the original.

Q May I ask you, sir, where did you get this which I hold in my right hand?

MR. GARTNER: I left it on the --

A Itjust appeared here.

MR. GARTNER: You remember I offered to substitute that and apparently I left it there by mistake.

Q I meant to ask you this, sir, I forgot:

Excuse me for interrupting what we are talking about, but Plaintiff's Exhibit 5 is an appraisal?

A Yes, sir.

Q Do you know who made this appraisal?

A I think it says on there somewhere. I don't remember who did it.

Q Do you know who made this appraisal marked Plaintiff's Exhibit 5, you yourself?

A No, I do not.

Q And when was the first time in your life that you saw this appraisal?

A First time in my life I saw it was the first time I visited the offices of Mr. Gartner.

THE COURT: What date would that be?

A Can I look at my book to see if I --

Q The year is good enough for me.

A Well, it was late last year or early this year. Late '74 or early '75, I believe.

Q Are you here under a subpoena?

A No, sir.

Q Are you being paid for your time?

A I get $100 a day for my services.

Q Is that what Mr. Gartner has agreed to pay you?

A Yes, sir.

Q Anything else?

A No, sir.

Q When you met with Mr. Gartner did you get a written memorandum from him of the areas as to which you were

required to testify?

A No, sir.

Q Did he leave this appraisal with you?

A Yes, sir.

Q What instructions did he give you at that time?

A He asked me to look over it carefully to see if I could identify those which are special purpose and those which are general purpose, and that is what I had --

THE COURT: I do not understand just what you mean by that. What does that mean?

THE WITNESS: My testimony was some machinery that was for the manufacture of jewelry watches only and other machines I described as general purpose that would fit into perhaps any machine shop.

THE COURT: I see. All right.

Q Did you, sir, discuss or consult with anybody after receiving the appraisal marked Plaintiff's Exhibit 5? And if so, with whom?

A Yes, sir, I checked it with Mr. Fechter of the Hamilton Watch Company.

Q Mr. who?

A Fechter.

Q What was he at the Hamilton?

A He was in charge of our mechanical department, and

was the man that I had asked to attend the auction at Strasburg when the machinery was sold.

Q Was he an engineer?

A Yes, sir.

Q In other words you took this appraisal and you went and visited an engineer and went over the list with the engineer?

A No, sir.

Q You did not visit an engineer?

A Yes, I did. I went over the list with him, only to see if this was the same machinery that he told me he had gone to look over, and we actually bought a few pieces of machinery at the auction sale.

Q Did you attend or did he attend?

A He attended.

Q All right, and did you discuss with him what it was that Mr. Gartner wanted you to do?

A No, sir.

Q And all you say that you did was to separate out the special purpose machines and the general purpose machines?

A Yes, sir.

Q And you did that, right?

A Yes, sir.

Q And did you give him the specifications of each

category?

A Well, I marked each one.

Q Where is it? May I see it?

A I have a copy of it.

Q Would you be good enough to let me see it?

A Yes, sir.

MR. STREAM: May I take this sheet, your Honor, and mark it Defendant's Exhibit C?

THE COURT: Mark it for identification.

xx (Defendant's Exhibit C marked for identification.)

Q Now, sir, would you be good enough to examine Defendant's Exhibit C for identification, and tell me whose handwriting appears on the second page?

A My own.

Q What?

A My own.

Q All right.

A Yes, sir.

Q And how about on the third page?

A Yes, sir, all mine.

Q Pardon me?

A That's mine.

Q How about the handwriting on all the other pages?

A It is all mine.

Q Anybody else's?

A No, sir.

Q When did you make those notations, that is to say, the notations shown on Defendant's Exhibit C for identification?

A It was immediately after I got home from New York when I picked that up.

THE COURT: What day was it?

THE WITNESS: Your Honor, if I could just determine what day it was I first came to New York, I could tell you exactly.

THE COURT: We cannot help you. We were not there. Was it a week ago, two weeks ago?

THE WITNESS: Oh, no, no, sir, it is a matter of months ago at this point.

THE COURT: Months ago?

THE WITNESS: Yes.

THE COURT: In '74?

THE WITNESS: I think it was late '74.

Q Is that the first time you met Mr. Gartner?

A Yes, sir.

Q And you went home and made those notations that night, or did you make them after you visited your friend over

at the Hamilton Watch?

A No, I made them myself first.

Q Before you went?

A Immediately when I went home.

Q And thenyou'd go over and show it to him?

A Then I went over.

Q Checked it out with him, right?

A I wanted to see if there was the same list that we'd looked at at the time of the auction.

Q Did he check the list with you? That is my question.

A No, just -- no, sir. As to the judgment as to whetner it is general purpose or special?

Q Sure.

A No, sir, that's my own judgment.

Q Your judgment?

A Yes, sir.

Q I see, as a former president for many years of a watch company, right?

A Yes, sir.

Q Was Hirschmann Corporation a reputable company as far as you knew?

A Oh, as far as I know, yes, sir.

Q And highly skilled and experienced in the

importation and sale of high precision instrumentation in the watch industry?

A Yes, sir.

Q Did they ever do any appraisals as far as you know?

A Not that I know of.

Q You didn't know?

A No.

Q Didn't you know, as a matter of absolute fact, that they did an appraisal in 1964 of the plant, machinery, and equipment, on-sight, fair market value, at Strasburg, Pennsylvania? Didn't you know that?

A Did they make this appraisal?

Q Would you be good enough to look at Defendant's Exhibit A for identification and you tell me whether that does not refresh your recollection that you not only knew that the Hirschmann Corporation made an appraisal in 1964, two years before the appraisal made by the defendant in this case, and then tell me whether you don't remember having seen a counterpart of that very exhibit before today?

A This appraisal, I believe I did see in the offices of the attorney, but this is not the one that I had for marking purposes.

Q Indeed it is not.

A Okay.

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Q No, it is altogether different, isn't it?

A Just the machines may be the same. I haven't compared them.

Q But nevertheless you say that you did see the document marked Defendant's Exhibit A for identification?

A I am quite sure I did.

Q When and where for the first time?

A In the offices at the same time as I saw the other, I believe.

Q Who showed it to you?

A Mr. Gartner or Mr. Brill.

MR. STREAM: I offer it in evidence.

MR. GARTNER: May I see it?

Your Honor, it appears to be a copy of the exhibit which was marked on the depositions. I do not want to take the time of the Court to compare it.

MR. STREAM: I represent it is a true copy.

MR. GARTNER: If counsel represents it is a true copy, and subject to checking, I have no objection.

THE COURT: Very well. Admitted on that basis.

MR. STREAM: All right, may it be received then?

THE COURT: Let him mark it first.

(Defendant's Exhibit A received in evidence.)

Q Now in my left hand I have Defendant's Exhibit A,

right?

A Yes, sir.

Q In my right hand I have Plaintiff's Exhibit 5, right?

A Right.

Q A is the other appraisal that you saw, right? Notice that it is in different form. It is on work sheets, more or less; isn't that right?

A Yes.

Q And you were told, were you not, that that was the Hirschmann Corporation appraisal of 1964; isn't that right?

A I was told it was made by -- not by Hirschmann but some other name.

Q How about the name Kaefer?

A It could be. I don't remember what it was.

Q Did you not know that Mr. Kaefer was vice president in charge of engineering for Hirschmann Corporation?

A I was told that.

Q You say you were told that?

A Yes.

Q All right, and you saw that appraisal, did you not, at the same time that you saw and studied the 1966 appraisal of Industrial Plants Corporation, namely Plaintiff's Exhibit 5; isn't that so?

A I believe this is the one that I looked at at the

time, yes.

Q Now, sir, would you be good enough to look at me and don't worry about the pages right now.

A Okay.

Q Sir, when you testified during your direct examination this afternoon that the items with the exception of the presses were "over-valued," and that was the term you used, right?

A Right, sir.

Q Were you talking about the figures in the 1966 appraisal which is Plaintiff's Exhibit 5?

A Those --

Q Or were you talking about the figures in the 1964 appraisal which was Defendant's Exhibit A, that is to say, the Hirschmann?

A I was talking about these figures because I don't remember what those were at all.

Q Will you do me the favor of looking.

THE COURT: I do not know what the answer means. He is referring to these or something. Will you state your answer again.

A The figures I was referring to were those which appear in this appraisal.

Q That is Plaintiff's Exhibit 5, that is the appraisal

by Industrial Plants Corporation in 1966?

THE COURT: That is this one, Exhibit 5?

THE WITNESS: Yes, sir.

Q When you made that statement, were you not aware of the figures in the 1964 appraisal reflected in Defendant's Exhibit A, that is to say, the Hirschmann Corporation appraisal?

A I never compared this one with this one.

Q I know you didn't but were you not aware of the figures in this, that which I hold in my hand, Defendant's Exhibit A? Yes or No?

A I was aware there were figures there but what they meant I don't know.

Q Did you look at them?

A Just cursory glances.

Q Did you just glance through them like that?

A Not much more than that.

Q Not much more than that despite the fact that you were told, were you not, that that was an appraisal by Hirschmann Corporation, a responsible company --

MR. GARTNER: Objection, your Honor.

Q -- two years before that, right?

MR. GARTNER: Objection, your Honor, to the form as contrary to the testimony. He did not testify he was told.

THE COURT: He can answer no then.

A No.

Q I beg your pardon?

THE COURT: He said no.

Q No what?

A I did not know what these numbers were in relation to the others.

Q Now let's start over. I am not asking you whether you knew the relationship between those two documents. What I asked you is this: You have an appraisal here marked Plaintiff's Exhibit 5 and that --

A Yes, sir.

Q -- Plaintiff's Exhibit 5, that is the appraisal by Industrial Plants Corporation in 1966 done in August?

A That's right.

Q Isn't that so?

A Yes, sir, I believe that's true.

Q It was represented to you as such?

A Yes.

Q And you noticed there were items there of machinery and there were dollar figures too, weren't there?

A That's correct.

Q And you said in your direct testimony that those figures, with the exception of the presses, were "over-

valued"; isn't that right?

A In my opinion.

Q And you reached that conclusion after studying Plaintiff's Exhibit 5 at your home; isn't that so?

A That's correct.

Q And while you were studying Plaintiff's Exhibit 5 at your home, you also had this appraisal which has been prepared in 1964 by Hirschmann Corporation, namely Defendant's Exhibit A?

A I did not have that appraisal at my home. I had this one.

Q I thought you told us that you had seen this.

A I saw that in the offices of Mr. Brill and Mr. Gartner.

Q And they didn't leave it with you; is that it?

A No, sir.

Q You just looked at it and glanced through it, right?

A Yes, and I took this one to say which is general purpose and which is special purpose.

Q Didn't you know that the figures in Defendant's Exhibit A were related to the same items of machinery and equipment that are set forth in the appraisal of Industrial Plants Corporation, that is to say, Plaintiff's Exhibit 5? Did you know that?

A Yes.

Q Didn't you think it was important to make a comparison?

A I took this for the purpose of not appraising the machines but to mark whether they were general purpose or special purpose.

Q Yet you testified to this court and jury that you reached the conclusion that the figures in the one before you, which is to say, Plaintiff's Exhibit 5 --

A That's correct.

Q -- were over-valued, that is an appraisal, is it not, sir?

A Yes, it is.

Q And you did that without giving the slightest consideration to the formal appraisal by Hirschmann Corporation in 1964; is that right?

A That's correct.

MR. GARTNER: I object to the form of the question.

MR. STREAM: It is answered.

MR. GARTNER: There is no testimony this is a formal appraisal, and I would like at this time to look at it and see whether it is a formal appraisal.

THE COURT: All right, I think he will let you see it.

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MR. GARTNER: May I see it?

MR. STREAM: I will let you see it when it has been marked in evidence. You let it go into evidence. And I am going to work with it until I am done, and then you can look at it.

MR. GARTNER: I object to him referring to it as a formal appraisal. There is no testimony that it is a formal appraisal.

MR. STREAM: I consent that the word "formal" be deleted.

MR. GARTNER: Or appraisal. Appraisal is a specific term of art, and since he will not let me see it, I don't know what that is.

THE COURT: You will if it is offered, counsel.

Q Now, Mr. Sinkler --

MR. STREAM: I am sorry, your Honor, I am looking for a document.

MR. GARTNER: While you are not using that, may I look at that?

MR. STREAM: Please, sir, allow me to pursue my own course. Just be patient.

MR. GARTNER: I am not interfering with you.

THE COURT: Please cease commenting, Mr. Gartner.

MR. STREAM: May we have this marked defendant's

next exhibit for identification.

xx (Defendant's Exhibit D marked for identification.)

MR. STREAM: It was marked Defendant's Exhibit B for identification during pretrial examinations.

Q Let me show you this, sir, and tell me whether you don't recall having read this letter.

THE COURT: Repeat the identification.

MR. STREAM: Yes, I showed him Defendant's Exhibit D for identification.

Q Did you ever see that before?

A I think not.

Q You think not? Look at it carefully and then tell me yes or no.

A Sorry, sir, I don't remember it.

Q I beg your pardon?

A I don't remember it.

Q Don't you remember if you saw it last month?

A I don't remember seeing it last month or the first -- last year, if that was at the time I made the first visit.

Q I didn't hear you.

A If the first time I visited Mr. Gartner's office was last year, whenever it was, when the appraisal was given to me, I do not remember seeing this, no, sir.

Q Do you remember having seen it ever before in your life other than this afternoon in this courtroom?

MR. GARTNER: Referring to what, if your Honor please, for the sake of the record?

MR. STREAM: Defendant's Exhibit D for identification.

THE COURT: What is that?

MR. GARTNER: Referring to what, for the sake of the record.

THE COURT: Mention the exhibit, counsel.

MR. STREAM: I gave him the exhibit, your Honor.

THE COURT: What was the exhibit?

MR. STREAM: Defendant's Exhibit D for identification. I said that in my question, sir.

Q Do you know what a Sonogen U'Sonk cleaner is?

A Ultrasonic cleaner.

Q What is that?

A Yes, sir, it is a cleaning machine that is vibrated at ultra-high frequency which shakes little particles that may be adhering to the surface of a gear or a pinion.

Q Is that the kind of a piece of machinery which is general purpose or special purpose?

A It can be used to clean all kinds of small parts. It was designed specifically for the watch industry, but you

can clean a diamond ring with it.

Q All right.

MR. STREAM: I will be no more than ten or fifteen minutes, your Honor. I am going to hurry and finish with him today.

Q Where is that exhibit that you had with your little notes on it? Did I take that from you?

A I have that, yes, sir.

Q Tell me sir, is an Essa P.L. ten-ton press a general purpose instrument?

A I would say so, yes.

Q How about a Mikro three-spindle-side hole drill?

A No, sir.

Q That is not, you say?

A That is special purpose.

Q I see. How about a Greiner Chronographic Rate Recorder?

A Greiner Chronographic Rate Recorder is special purpose for timing watches.

Q Can it be used in the fuse business?

A It can be adapted for use in the fuse business, yes, sir, but not in the form in which it is --

Q Pardon me?

A Not in the form which you buy it from Greiner.

Q I understand that but it can be adapted, can it not, to the manufacture of other high precision instruments, right?

A Yes. It would be expensive.

MR. STREAM: I move to strike out the last part of the answer.

THE COURT: Yes, strike it and answer the question..

Q Just the question. I am not asking you how expensive it is.

MR. GARTNER: Counsel moves to strike out answers that he does not like, your Honor.

MR. STREAM: That is an offensive remark.

THE COURT: He has moved. He said it was not responsive. There is a discrimination. There is a difference. Read the question to the witness, Mr. Reporter.

Q Am I correct, sir, in understanding --

MR. STREAM: By the way, would your Honor be good enough to instruct the jury that where an answer is stricken, the jury must pay no attention to it?

THE COURT: Yes, I will instruct them now.

Whenever there is such a situation where the judge directs that the answer or a portion of it be stricken, you are no longer to consider it and you should not consider it in connection with any verdict.

MR. STREAM: Thank you.

THE COURT: I will charge you again about it during the charge.

Q Mr. Sinkler, am I correct in understanding that other items of so-called special purpose machinery and equipment could be adapted for other uses as an integrated part of the plant facilities of Time & Micro Industries?

MR. GARTNER: Objection to the form. Hypothetical. There is no relation.

THE COURT: Overruled. It is not hypothetical.

Q Right?

A Very few of the ones on those lists -- on that list are adaptable.

Q Could some of them be?

A Oh, yes.

Q All right.

In the course of your experience in the running of a watch company, do you know or have you run into the term "fair market value?"

A Oh, yes, sir.

Q Would you be good enough to tell me whether you subscribe to this definition of "fair market value?"

MR. GARTNER: Objection, your Honor, it goes beyond the direct. The witness is not here as an expert appraiser.

MR. STREAM: We don't know that, your Honor. That

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is just the point of the matter. We do not know what he is here for.

THE COURT: He has testified to valuation generally, has he not?

MR. GARTNER: He has testified to the prices of products, not as to valuations in the field of appraising.

THE COURT: Prices involve the market, don't they?

MR. GARTNER: No, your Honor, fair market value is a term of art in the profession of appraising, and this witness is not an appraiser. He said he is not an appraiser.

MR. STREAM: I will clear it up by withdrawing the question. I am going to pursue it differently.

Q When you said, sir, that items on the appraisal prepared by Industrial Plants Corporation were "over-priced or over-valued," what did you mean by over-valued?

A I meant that I could think of no one who would buy that kind of equipment at the prices that were listed on that appraisal.

THE COURT: In other words, Mr. Witness, you were thinking about what was fair market value for the buyer to give; isn't that so?

THE WITNESS: I would agree to that, yes.

MR. STREAM: All right.

THE COURT: All right, the objection is overruled.

Q Now, sir, would you be good enough to let me read you this definition of fair market value, and you tell me whether or not you subscribe to it:

"The term market value is the highest price estimated in terms of money which property will bring if exposed for orderly sale in the open market allowing reasonable time to find a purchaser who buys with knowledge of all the uses to which it is adapted and for which it is capable of being used."

MR. GARTNER: I object, your Honor.

THE COURT: Overruled.

MR. GARTNER: He is being asked to testify to a term of art in the appraisal profession and he is not an appraiser.

THE COURT: I know but he has testified as to material values about this list. I overrule the objection.

MR. GARTNER: But value, your Honor, has many different meanings.

THE COURT: Yes.

MR. STREAM: You bet it has, your Honor.

THE COURT: You do not need to tell me that. That is conceded.

MR. GARTNER: It is like asking a layman what res ipsa loquitur means.

THE COURT: If he cannot answer it then he can say so.

MR. STREAM: Exactly so.

Q Mr. Sinkler, if this is a puzzlement to you or beyond your capabilities, then be honest and tell the Court and jury that you cannot say whether or not this is a fair definition. Would you like me to read it again or have you got it in mind?

A I think I have it well enough in mind.

Q You tell me yes or no, sir, whether you find that a definition which you accept. Just yes or no, or "I can't answer it because I don't know."

A I can accept that as a definition.

Q You could?

A Yes.

Q You could accept it?

A Yes.

Q Could you also accept the following qualification of the definition of fair market value as the price that could be expected if a reasonable time is allowed to find a purchaser and both seller and prospective buyer are fully informed? Would you buy that as an additional portion of the definition of fair market value?

MR. GARTNER: Objection, your Honor.

Q Yes or no?

MR. GARTNER: Objection, your Honor. He is being asked to testify to appraising, and he is not an appraiser.

THE COURT: I have overruled the objection before. I overrule this one. He testified to a certain degree in reference to prices on the list.

Q Would you accept that, sir, as a part of the definition of fair market value? A yes or no or I don't know.

A Well, I don't know what reasonable means.

Q You don't know?

A No.

Q Then you tell me whether or not you can subscribe to that definition. If you can say yes, say yes. If you cannot, say no, and if you don't know, say, "I don't know."

MR. GARTNER: Objection. I think the witness has already answered. He said he does not know what a term in the definition means.

MR. STREAM: Please, your Honor, just an objection with no comments.

THE COURT: All right, let's get a final answer from him.

A I think I can accept it as a general definition.

Q Thank you.

Do you recognize, sir, that there is a difference

fair market value and liquidating values at forced public sale under auction?

MR. GARTNER: Objection, your Honor, we are getting into the profession of appraising. We are going to present an appraisal expert later on.

THE COURT: That may be.

MR. GARTNER: Mr. Sinkler is not that man.

MR. STREAM: We will see.

THE COURT: He has testified as to given prices and--

MR. GARTNER: He has testified --

THE COURT: I think it is permissible, and I shall overrule your objection.

MR. GARTNER: He has testified as to what in his knowledge people would have paid for it.

THE COURT: What is that?

MR. GARTNER: That is not the appraisal definitions. It is like asking you or me to testify as to accounting terms. I don't know anything about accounting terms.

MR. STREAM: Please let the witness --

MR. GARTNER: I know what prices are.

THE COURT: I think he is entitled to this cross examination because of what his testimony, his direct testimony was. So you are overruled. Now either state it again or let the reporter read it.

Q Let me put the question again to you, sir: Do you recognize a distinction between a fair market value sale transaction and a transaction under an auctioneer's hammer at a forced sale in liquidation? Just answer yes or no or I don't know, whichever you want to do.

A I think of those as being synonymous, but --

Q You do?

A Yes.

Q Your opinion is that there is no difference between fair market value and the value of an item intended to be placed at forced sale in liquidation under an auctioneer's hammer? Is that your best testimony under oath?

A I have trouble with the definition of fair market value, as I told you, when you say reasonable time. An auction is published weeks, months in advanced. That is not a hurried sale.

MR. STREAM: I move to strike out that answer as totally irresponsive to my question.

THE COURT: Yes, strike it out.

MR. GARTNER: I object, your Honor. I object to striking it out.

THE COURT: Overruled.

Q Let's try one more time.

THE COURT: It is not responsive.

MR. GARTNER: Respectfully, your Honor, I think it was.

Q When you said to me before in your cross examination that you meant by over-valued what it would sell for, that is what you said, right?

A I think I said I know of no one who would pay those prices for that machinery.

Q Under an auctioneer's hammer, right?

A I didn't say that.

Q Is that what you meant?

A No.

Q What did you mean?

A On any terms.

Q And under an auctioneer's hammer at least, right?

A That's one way of selling it.

Q And any other way, right?

A Any other way.

Q As an individual item, right?

A Right.

Q Second-hand machinery, a piece of second-hand machinery, right?

A Yes.

Q All right. You weren't talking about the whole plant together in place and intact; that is something else,

right?

A I testified that had no market either.

Q That is something else, isn't it?

A That's right.

Q We will get to that in a minute.

A All right.

THE COURT: I hope that minute comes, counsel.

Q Yours had a market, didn't it, to the United States Government, right?

A That's correct.

Q All right, we will get to that later. Anyhow, is it your testimony, and it if is state it candidly, that is what the Court and jury expect from you, that there is in your mind no difference between fair market value, the definition of which I read to you, and I will read it again if you want it --

A No, no problem.

Q -- on the one hand, dealing in terms with an orderly disposition of a piece of property between a ready and willing purchaser and a ready and willing seller under no disabilities or compulsion who meet and strike a bargain, on one hand; and a sale of an item under an auctioneer's hammer at an auction sale? There is no difference in value so far as you know between those two terms?

A As far as I am concerned they are both the same.

MR. GARTNER: Objection as to form.

MR. STREAM: Thank you, that is an answer. He says there is no difference.

THE COURT: All right, overruled. Is that all, Mr. Stream?

MR. STREAM: Very few questions, your Honor, probably three or four.

THE COURT: I am not going to count them but I hope there are not more than three or four minutes now, because Mr. Gartner may want to redirect.

MR. STREAM: There is always tomorrow. We are going to be here.

THE COURT: All right, let him come back then.

MR. GARTNER: I thought you wanted to save the time of the Court.

THE COURT: All right. He will have to come back if there is redirect, counsel, I am afraid.

MR. STREAM: Bear with me, if your Honor will, for one minute.

Q By the way, when was the last time you visited Time & Micro?

A At the plant?

Q Yes, sir.

A That first time back when it was first opened.

Q What year?

THE COURT: When?

THE WITNESS: That was 1959 is my -- if my memory serves me.

Q Is that the only time you were there?

A Oh, yes, sir.

Q Was that the first time you were there?

A Yes.

Q And the only time you were there?

A In the factory, yes.

Q You mean you had not been in the factory since 1954?

A Nine.

Q '59?

A '59, yes, when it was first opened. Whatever year it first opened.

MR. GARTNER: Please move back, Mr. Stream. Do not shout in my ear.

Q You mean you were not in the factory in 1964 or 1965 or 1966?

A No, sir.

Q So you do not know what the condition of the machinery and equipment was in 1966, do you?

A No, sir.

Q Or 1964, do you?

A No, sir.

MR. STREAM: That's all.

THE COURT: Any redirect?

MR. GARTNER: Yes.

THE COURT: I hope it will be brief.

REDIRECT EXAMINATION

BY MR. GARTNER:

Q Mr. Sinkler, you testified that the United States Government bought the Hamilton plant in Lancaster, Pennsylvania, as an ordinance facility. For what purpose was it to be used by the Government?

THE COURT: For what purpose was it to be used?

MR. GARTNER: Was it to be used, yes.

A To insure a continuation of the manufacture of time fuses, both now and in the future.

Q How long had Hamilton Watch Company at that facility been making fuses for the United States Government?

A From 1942 to the present time with the exception of 1946, '47, '48 and '49.

THE COURT: I do not understand that at all. What do you mean by that?

MR. STREAM: I don't either but it is all right

with me.

A Immediately after World War II we went totally out of the fuse manufacturing business, and then we got right back into it in 1950 for Korea, so except for that short period since 1942, we have been manufacturing fuses.

THE COURT: All right.

Q Had the Precision Time Company ever manufactured fuses for the United States Government?

A Not that I know of.

Q When you were vice president of manufacturing for Hamilton Watch Company, did you purchase machinery, recommend the purchase of machinery?

A Yes, sir.

Q Mr. Sinkler, you have testified that the tariff cut in January 1967 was expected. For how long had it been expected?

THE COURT: Before when?

Q Before January 1967.

A From 1964 on.

Q Was that common knowledge in the watch industry?

A Yes, sir.

Q What would it have taken for anybody outside the watch industry to find out about that prospect?

THE COURT: Future indication, you mean.

Q What would it have taken for somebody to find out about the common knowledge in the watch industry?

A A call to any of the U.S. manufacturers would have answered.

Q Telephone call?

A Yes.

Q Do you know of anyone, including the United States Government, who in 1966 would have bought the Time & Micro plant intact for the manufacture of fuses?

MR. STREAM: Just a second. Objected to. That has been answered and we are done with that. That is redundant, your Honor.

MR. GARTNER: I do not believe it has been answered, your Honor. It will take just a moment for the witness to say yes or no.

THE COURT: I think it was answered. Sustained. It is repetitious.

MR. GARTNER: May I have that exhibit that you kept from me, Mr. Stream?

MR. STREAM: Yes, I will give you the one I kept from you, counsel.

MR. GARTNER: Thank you. If you can find it. Maybe you have hidden it so that you cannot. Is this it?

MR. STREAM: Your Honor, I will make a point of this

before the bench. I ask the Court to insist that counsel address the Court and not me. That is proper procedure.

THE COURT: Yes, I know it is, counsel.

MR. STREAM: I do not like to be charged with hiding.

THE COURT: He is right, Mr. Gartner.

MR. GARTNER: Of course, your Honor. I am simply asking him for the exhibit.

THE COURT: Well, you interjected a word there of some kind which was unnecessary or inappropriate.

(Mr. Stream handed a paper to Mr. Gartner.)

THE COURT: All right, what is your next question, please.

MR. GARTNER: I want to look at that exhibit, your Honor.

THE COURT: All right, take your time. He is your witness.

MR. GARTNER: I have no other questions, your Honor. I simply want to remind the Court that Mr. Sinkler has said that he would mark the Exhibit 5, I believe it was.

THE COURT: Yes, arrange with your adversary how he is to mark it and what it is --

MR. GARTNER: For the record, he will check those pieces of equipment which are precision equipment.

THE COURT: Is that satisfactory?

MR. STREAM: That is not what I understand. You tell us, sir, if you will --

THE COURT: You and Mr. Stream can agree on it and not take the time of the Court for that.

MR. GARTNER: We will work it out, your Honor. We will work it out.

THE COURT: Or the jury.

MR. GARTNER: We will work it out.

THE COURT: Please do it and do it this afternoon.

MR. STREAM: Are we recessed until tomorrow morning, your Honor?

THE COURT: 10 o'clock tomorrow morning.

And to the jury, please continue to heed the instructions which I gave you this morning.

(Adjourned to Thursday, April 24, 1975 at 10:oo o'clock.)

AJAX HARDWARE MANUFACTURING CORP.,

vs. 69 Civ. 1900

INDUSTRIAL PLANTS CORP.

April 24, 1975
10:00 A. M.

- - -

(Trial resumed.)

(In the robing room.)

THE COURT: We have bad news from a juror, this idiot woman number 2 -- her name is Scalia -- came in and she was pregnant. She knew that she was pregnant and now she calls up and the doctor says she can't come.

Now, what do we do with a pregnant woman? I have no other alternative but to promote one of the alternates.

Now, I would like another stipulation, as long as we are having to do it, and that is if another juror should be disabled -- and that would give us the second substitute, of course -- if another is required and we have to go to off that you stipulate to a five person jury.

Do you so stipulate?

MR. STREAM: I so stipulate.

THE COURT: Otherwise you may get a mistrial.

MR. STREAM: I so stipulate.

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FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

THE COURT: Well, Mr. Gartner, I am awaiting your decision.

MR. GARTNER: I need a moment to decide, your Honor.

THE COURT: I wouldn't think you need to take long. You want to save your case.

MR. GARTNER: I don't think I can st pulate it.

THE COURT: Very well, take the consequences then. That's all I have got to say. I am not going to worry about it.

MR. STREAM: May I have three minutes to get my papers set up?

THE COURT: Yes.

My clerk has called this woman. He has the name of the doctor and is trying to get her. That is all I can do, gentlemen.

MR. GARTNER: Well, your Honor, we have --

THE COURT: Never mind. You said no. I am not going to fool around with it.

MR. GARTNER: I have another matter, your Honor.

THE COURT: All right. This is a morning prayer of some kind. What is it, counselor?

MR. GARTNER: Oh, your Honor, this is not a morning prayer and I wish you would not start every day in that tone of voice when I have a perfectly reasonably --

THE COURT: I apologize for my tone of voice.

MR. GARTNER: I have a perfectly reasonable application to make.

THE COURT: Go ahead, make it. It is right on the record. There is the reporter.

MR. GARTNER: You still maintain the tone of voice, even though you apologized for it.

THE COURT: I am not going to excuse myself for my tone of voice. My tone of voice does not indicate anything as to what I should do with your application.

MR. STREAM: I want to make a statement for the record -- excuse me -- I want to make a statement for the record. I found nothing exceptional about the tone of voice of this Court. I want the record clear that I heard no raising of the Court's voice in any way.

MR. GARTNER: You had a different position when the voice was raised against you, Mr. Stream. There is no point in making that comment.

THE COURT: Go ahead, make your application. Let's stop fussing around.

MR. GARTNER: Your Honor, we intend to read the deposition of Mr. Klein this morning.

THE COURT: So what?

MR. GARTNER: And we intend also to put in the

documents which he identified in that deposition.

THE COURT: Yes, yes.

MR. GARTNER: At the time that we served the written interrogatories, of course, the defendant had an opportunity to serve cross-interrogatories, and they did.

THE COURT: Yes.

MR. GARTNER: As to two of those questions we objected, we filed objections.

THE COURT: Well, what was done with that matter?

MR. GARTNER: It is a formal objection.

THE COURT: Was anything determined by any judge?

MR. GARTNER: No. Under the rule the defendant then had an opportunity to reframe the question, and they did not reframe the question.

THE COURT: Will you give me --

MR. GARTNER: We are now --

THE COURT: Now, wait, I want to stopyou to promote speed on this thing.

MR. GARTNER: Yes, your Honor.

THE COURT: I want to know what memorandum, if any, the judge made.

MR. GARTNER: There was no application to the judge, your Honor. We preserved our objection. We don't have to make an application.

THE COURT: I am going to listen to your adversary. What do you want to do about it?

MR. GARTNER: It is a very simple question.

THE COURT: All right, what do you want me to do about it?

MR. GARTNER: Let me tell you.

THE COURT: Go ahead. I told you three times.

MR. GARTNER: If you will allow me --

THE COURT: I will allow you. Just go ahead and do it and say it.

MR. GARTNER: I will, your Honor. The objection we made was that the attachments which they had to their two questions were copies of letters which they had underlined, and the underlining was not in the original.

Now, the witness was asked did Ajax receive the original of these letters and he answered yes, that they had received the original. Now, our application is simply to put in the original.

THE COURT: All right.

MR. STREAM: That is consented to.

THE COURT: Oh, it is consented to.

MR. GARTNER: All right. Thank you, thank you, your Honor.

MR. STREAM: May I have three minutes, your Honor?

MR. STREAM: I am, your Honor.

THE COURT: Are you now?

MR. GARTNER: If I understand the stipulation, your Honor. Would your Honor repeat it, please?

THE COURT: Yes, and it is that if more than two jurors are excused counsel will agree that a jury of five with a unanimous decision may continue and determine the case.

Do you agree to that?

MR. GARTNER: Yes, I do.

THE COURT: And you?

MR. STREAM: I do, your Honor.

THE COURT: That is it.

Then bring her in and I will excuse her now.

(Juror No. 2 entered the robing room.)

THE COURT: Now, for the reason -- is there anything else? Will you step out, gentlemen?

MR. GARTNER: Yes, but when you are ready, your Honor, if you would give us a moment before you resume. It is another matter.

THE COURT: Oh, for heaven's sake. All right. Go ahead.

(Counsel left the robing room.)

THE COURT: Now, I am compelled by reason of this paper which you secured from the doctor, where he says it is

THE COURT: I must tell the jurors that the No.2 Juror, Mrs. Scalia, has been excused for medical reasons and the No.1 Alternate takes her spot and the No.2 Alternate moves to the No.1 location.

We will now proceed. Go ahead, Mr. Gartner. Call your witness.

MR. GARTNER: I call Mr. George Sinclair.

G E O R G E D. S I N C L A I R, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. GARTNER:

Q Mr. Sinclair, what is your present occupation?

A I am president of the Keystone Appraisal Company, located in Philadelphia, Pennsylvania.

Q How long have you been president of the the Keystone Appraisal Company?

A Since 1968.

Q What is the business of the Keystone Appraisal Company?

A We are appraisers of industrial and commercial properties in both the field of real estate and machinery and equipment.

Q Are you a member of any professional organiza-

tions?

A Yes, I am. I am a senior member of the American Society of Appraisers and I am presently serving in that organization as its International President.

THE COURT: What is the purpose of this organization and who may become members?

THE WITNESS: The American Society of Appraisers is an appraisal organization of professional appraisers that recognizes a multi-disciplinary concept --

THE COURT: What does a person have to do to become a member?

THE WITNESS: In order to become a member, you must pass certain examinations. You must have a minimum of five years appraisal experience in your specialty. You must submit demonstrations of your work to the International Examining Committee. You must submit to personal interviews so that your character and your code of conduct can be investigated, both when you apply for membership and later on when you seek to advance to the status of senior member.

You must also then be examined orally and an investigation made.

THE COURT: Does that mean in part that you submitted certain appraisals for their consideration?

MR. GARTNER: Pardon?

THE COURT: I say the record shows that he said it. Once is enough.

MR. GARTNER: I know. I want to ask a question.

THE COURT: Go ahead and ask him.

Q What is your specialty, Mr. Sinclair?

A My specialty is the valuation of machinery and equipment.

Q What other professional organizations are you a member of?

A I am a member of the American Institute of Real Estate Appraisers, holding the designation MAI.

Q What does that mean?

A It means a member -- American Institute -- there are approximately forty-five hundred or forty-six hundred men in the country that have that designation.

I am a senior member of the American Right-of-Way Association.

MR. STREAM: May I have the witness repeat the name of the organization and spell it, please?

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A The American Right-of-Way Association is --

MR. STREAM: May I have the witness repeat the spelling of the name Right-of-Way? I didn't get it in my record.

THE WITNESS: American Right-of-Way.

THE COURT: What is that organization?

THE WITNESS: That's an organization of men engaged primarily in the acquisition of property for right-of-ways such as would be required for highways in condemnation, public utilities when they acquire pipeline easements or transmission line easements. They must acquire property for the construction of the right-of-way and valuation appraisals are required in all such acquisitions.

THE COURT: Are you a member of that organization?

THE WITNESS: Yes, I am.

Q What is your training as an appraiser, Mr. Sinclair?

A I attended Drexel Institute evening College for seven years after I left the service in 1946. I have taken appraisal courses given by the American Institute of Real Estate Appraisers, the Society of Residential Appraisers, and I have instructed the only machine equipment course given in the country under the sponsorship

Q -- what this is, Plaintiff's Exhibit No.7.

A This is a copy of the principles of appraisal practice and the code of ethics of the American Society of Appraisers which was adopted by its Board of Governors on February 2nd, 1964.

THE COURT: Is it still in effect, or has there been a superseding document?

THE WITNESS: There has been some slight modifications to it, your Honor, but --

THE COURT: You don't have those here, counselor?

MR. GARTNER: Yes, I do, but I would like to ask the witness another question before I --

THE COURT: Go ahead, ask him, please.

Q Were those principles in effect in 1966?

A Yes, sir, they were.

MR. GARTNER: I offer it in evidence, your Honor.

MR. STREAM: Consented to.

THE COURT: All right, mark it in evidence.

xx (Plaintiff's Exhibit 7 received in Evidence)

MR. GARTNER: May I hand this to the jury, your Honor, as I go on?

THE COURT: Why don't you read it, counselor? It will save --

MR. GARTNER: I don't want to read the whole

A Yes, they do.

Q Well, Mr. Sinclair, can you describe in general terms the function of an appraiser?

THE COURT: Well, it depends, doesn't it, on the situation?

MR. GARTNER: I will get to that, your Honor, but we have to start someplace.

THE COURT: All right, ask him if you want to do that.

MR. STREAM: I suggest, your Honor, that we start with this case.

MR. GARTNER: Well, we are on this case, Mr. Stream.

THE COURT: Do you object to this general question?

MR. STREAM: I do, your Honor.

THE COURT: It seems to me that it is too broad, counselor. Sustained.

Q Mr. Sinclair, what is the function of an appraiser of machinery and equipment?

A A machinery and equipment appraiser is a professional who has been engaged to place a value upon either a specific piece of machinery, a group of machines, or upon an entire plant.

Q And would you please describe for the jury and the Court how a professional appraiser of machinery and equipment would proceed upon being asked by a client to appraise machinery and equipment?

A The first thing he must have is an understanding of what value his is attempting to arrive at. There are many values which are apropos to the field of machinery equipment.

THE COURT: You don't mean the amount of the value, but the type of valuation; is that right?

THE WITNESS: I mean the definition of value, what the value is he is looking for. Is he looking for an insurable value? Is he looking for the market value of the machinery and equipment on site as part of an operating plant? Is he looking for the market value of the machinery and equipment for sale for off site use? Is he looking for the liquidation value under orderly conditions?

THE COURT: Well, in substance, doesn't that mean that there must be a statement and an agreement as to what kind of valuation is to be made?

THE WITNESS: It must be defined, yes, your Honor.

THE COURT: All right.

Q Now, if the appraiser is not told the purpose

of the appraisal, what is it his professional obligation to do?

A He must inquire of his client exactly what he wants. Very often a client is not clear as to exactly what he wants, so the appraiser must talk to him and determine what type of value he wants.

MR. STREAM: I move to strike out that part of the answer which begins with the words "very often it is not clear."

THE COURT: Yes, strike that out.

Q Now, Mr. Sinclair, what are the different functions and purposes which might be involvedin an appraisal of machinery and equipment?

THE COURT: Would you read that question, please.

(Question read)

MR. STREAM: I object to the form, your Honor.

THE COURT: Yes, sustained. I don't know what "function" means. You will have to restate it.

MR. GARTNER: I will ask the witness that.

MR. STREAM: I renew my objection to the form.

THE COURT: Sustained, counselor.

Q You spoke, Mr. Sinclair, of the purpose of an appraisal. What are the different purposes that might be involved?

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recognize any functional obsolescence or any economic obsolescence which might be applicable to the process or to the machine itself. It is generally a value an insured is looking for so that in the event of a disaster he has enough money to go back into business again.

Q You mentioned economic obsolescence. Would you please define that more clearly.

THE COURT: Briefly.

A Economic obsolescence is a very important element when you are dealing with value that has financial overtone. It is the --

THE COURT: What do you mean by "financial overtones"?

THE WITNESS: If it is being done for market value for either off site or on site use, for liquidation value under any condition, you must recognize the general economic conditions that affects the industry itself.

If there is a machine that is functioning in an industry that is going full blast, then economic obsolescence is limited.

If you have a machine or a group of machines that is in a depressed industry, it is going to limit the marketability of who is going to want to buy this machine.

Q The marketability of the machine?

A Yes, sir.

Q Now, there has been testimony, Mr. Sinclair, in this case that in 1966 there was a very limited market for American manufactured precision watches.

MR. STREAM: Excuse me, your Honor. I object to the form of that question. I don't mind counsel putting an assumed state of facts to the witness, but I do --

MR. GARTNER: I will withdraw the question.

MR. STREAM: Excuse me?

MR. GARTNER: I will withdraw the question, Mr. Stream.

Q Mr. Sinclair, if in 1966 there was a very limited market in the United States for precision watches manufactured in the United States because their cost was too high to compete with imported watches of the same type, would that condition affect the marketability of watchmaking machinery in the United States?

A If my research indicated that to be a true fact, my final result would so indicate that the machinery and equipment would be likely affected and would have the reduced marketability and thus a reduced value.

Q All right.

THE COURT: Why would that be?

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THE WITNESS: Well, your Honor, it's very --

THE COURT: Is it simple?

THE WITNESS: It's very similar to what's ' pening today in this country here.

THE COURT: Nevermind similarities to something else. Just tell us --

MR. GARTNER: Your Honor, will you please allow the witness to answer?

THE COURT: All right, go ahead if you want..

THE WITNESS: We have a case today with calculators --

MR. STREAM: No, your Honor.

THE COURT: That's the trouble. You go off. Sustained as to that. Just tell us about the --

MR. GARTNER: Perhaps the witness --

THE COURT: Let me ask the question and if you let him go ahead as I suggested you wouldn't get into this rut.

Now, can you explain why?

THE WITNESS: Because if the end product that a machine produces cannot be sold on the market, then the machine that produces that is limited. It really has no marketability. Nobody wants to buy --

THE COURT: In other words, it decreases demand,

is that it?

THE WITNESS: And as the demand decreases, the value decreases. Nobody wants a machine that is going to produce buggy whips if there is no market for a buggy whip. No matter how good it is, if there is no market for the thing nobody wants to buy a machine that produces it. It's as plain and simple as that, your Honor.

Q If I put another example to you, Mr. Sinclair, suppose machinery which is capable of producing gasoline pumps calibrated to sell gasoline at fifty cents a gallon in present day economy where gasoline is selling for more than fifty cents a gallon, would that machinery have value?

MR. STREAM: Objection, irrelevant and immaterial.

THE COURT: Sustained. We are dealing with something else.

MR. GARTNER: The witness has testified about watches, that's true, your Honor.

MR. STREAM: I ask that that commend be stricken from the record.

THE COURT: Yes, strike the comment, and I want no more comments from either side here. Let's go on. The jury is to disregard any comments heretofore made.

Proceed.

Q Mr. Sinclair, if a professional appraiser is

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told that the purpose of the appraisal is to determine whether the machinery and equipment will provide adequate collateral for a loan, what type of value would he be concerned with?

A He would be primarily concerned with the liquidation value of that machine for off site sale under forced conditions.

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THE COURT: Under what kind --

THE WITNESS: A liquidation sale for off-~~sight~~ site use under forced conditions.

THE COURT: It would have to be for something other than the location where that machinery is?

THE WITNESS: Yes, sir.

THE COURT: It could not be, you say, for the machinery in place?

THE WITNESS: Well --

THE COURT: Is that what you are saying?

THE WITNESS: I am saying if a man is going to loan money, he wants to know what the bottom figure is that he can guarantee.

MR. STREAM: No, that comment I ask be stricken from the record. This is an appraisal.

THE COURT: Yes, sustained, strike it. Do not volunteer any information. Answer the question which I asked.

MR. GARTNER: The witness --

MR. STREAM: No comments, sir.

MR. GARTNER: If your Honor please, I am not going to take instructions from Mr. Stream.

THE COURT: No, neither am I going to take instructions from you. I sustain the objection and I strike it out.

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Now, will you try to answer my question? Will you read the question, Mr. Reporter?

(Question read.)

A Yes, sir, that is what I am saying.

THE COURT: You assume -- well, I will withdraw my question.

Proceed.

Q In professional appraisal terms, what is the way in which you would describe that kind of value which is necessary for an appraisal for collateral purposes?

A I would define it as a liquidation value for off-sight use under force conditions.

Q Could it possibly be a fair market value?

MR. STREAM: I object to the form of the question. It is leading.

THE COURT: Sustained.

Q What does fair market value mean to you?

A Fair market value in and of itself is a meaningless term in evaluation of machinery and equipment.

MR. STREAM: I move to strike out that answer. The question was for a definition, your Honor.

THE COURT: Yes, sustained.

MR. GARTNER: Well, the witness is defining --

Q What does fair market value have any recognized --

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THE COURT: I want no more comment.

MR. GARTNER: Then I would ask your Honor to ask Mr. Stream not to make that kind of comment.

THE COURT: Neither one of you should and it is time it stopped. Now I object to the objection to this paper that you have submitted to this witness.

MR. GARTNER: I ask your Honor to interrupt this witness and call Mr. Kriser to identify his own appraisal at this point.

MR. STREAM: Absolutely not, your Honor.

THE COURT: No, I think we should go on with this witness.

MR. GARTNER: All right.

BY MR. GARTNER:

Q Now, showing you Plaintiff's Exhibit 5, the term "fair market value" appears at the head of the right-hand column. Will you tell us what that term means?

A That means nothing to me because it is not --

MR. STREAM: No "because," your Honor. The answer I suggest to the Court is, "It means nothing to me," not "because."

THE COURT: Yes, do not proceed with any "because." If it means nothing to him I do not know how you can expect any further answer.

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Q Is fair market value a recognized term of art in the professional appraisal of machinery and equipment?

A By itself it is not.

Q What is a recognized term of art in the appraisal of machinery and equipment?

A Market value for on-~~sight~~ site use --

THE COURT: Wait a minute. You did not listen to the question. Read the question, Mr. Reporter.

MR. GARTNER: I think he did, your Honor.

(Question read.)

THE COURT: That may be any one of a number of things.

THE WITNESS: That is what I am attempting to give, your Honor.

THE COURT: Well, you will have to revise your question.

Q Does any recognized term of art in the appraisal of machinery and equipment include the words "fair market value?"

A Yes, sir, it does. It includes the terms market value for on-~~sight~~ site use, market value for off-sight use, which distinguishes the difference between what a piece of equipment is worth on ~~sight~~ site, functioning as part of an operating facility over against the value of it when it is separated

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for removal to another sight. They are both market value, but there is a difference in that connotation as noted by market value on-~~sight~~ site and market value off-sight.

Q How would a professional appraiser proceed to appraise machinery and equipment to arrive at market value or on-~~sight~~ site use?

MR. STREAM: Your Honor, my objection to that question is that it is improper in form for the reason that this alleged expert should be asked whether there are any standard and accepted principles that govern. We have to find out --

THE COURT: In other words, you say that to ask how to proceed is improper?

MR. STREAM: Yes, because how he would do it is how he would do it.

THE COURT: Yes, I think that is correct.

MR. STREAM: If there are objective standards let us see what they are, show them to us.

THE COURT: Yes, ask him how he would proceed is the proper way.

MR. GARTNER: If the reporter would read the question back I think you will find I did not ask him how he would proceed.

THE COURT: Read it.

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(Question read.)

THE COURT: Yes, sustained. Strike out the objectionable portion.

Q Mr. --

THE COURT: Sinclair is the name.

Q -- Sinclair, would you refer to Plaintiff's Exhibit 7 --

THE COURT: Does he have it up here?

MR. GARTNER: Yes, he does, your Honor.

THE COURT: Have you got it there?

THE WITNESS: Yes, sir, your Honor.

THE COURT: Well, look at it.

Q And point out to us, if you will, and read those sections of the principles of appraisal practice which describe the methods and the standards of appraisal for machinery and equipment.

THE COURT: State the page, if you please.

A Item No. 2, is a broad heading which defines the objectives of appraisal work. This is what I went into --

THE COURT: Does that apply to machinery off-sight or on-sight?

THE WITNESS: This applies before you can start, your Honor. It is just the objective you are trying to get at. This is the starting point. This is the objective of

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the appraisal.

THE COURT: It does not particularize either on-sight or off-sight yet?

THE WITNESS: Yes, that's right.

THE COURT: There you are.

THE WITNESS: Then there is the appraisals --

THE COURT: Never mind. There is no question yet. Do not volunteer information. Wait until you get a question.

Q Would you refer, please, to page -- to section 6 of Plaintiff's Exhibit --

THE COURT: 7?

Q -- 7, and tell the Court and the jury what kinds -- what the standard principles are with respect to various kinds of value?

A Sections --

MR. STREAM: Just a moment.

THE COURT: Wait a minute. Wait.

MR. STREAM: Do I understand that counsel wants him to read from this? If he does, I do not object. I just want to understand what he wants him to do when he looks at section --

MR. GARTNER: Your Honor --

THE COURT: It has to be incorporated in your question, counsel. This is an admitted exhibit. It is an

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instrument.

MR. GARTNER: I would like the witness to read it, your Honor.

THE COURT: All right, well, say so. That is all you have to say.

MR. GARTNER: I do not understand why it is not clear.

THE COURT: I do.

Read that section then, Mr. Witness.

THE WITNESS: Section 6 of the principles of appraisal practice is entitled, "Appraisal methods and practices. Section 6-1, various kinds of value. The society recognizes that different kinds of property may have different kinds of value depending upon the particular attendant circumstances and further that these are both basic and subordinate kinds of value. Good professional practices require that the appraisal be described in sufficient detail, in each case the nature and meaning of the specific value he is determining."

THE COURT: That is all in that section?

THE WITNESS: Section 6-1, yes, your Honor.

THE COURT: I am asking him, counsel. He is the witness.

MR. GARTNER: Yes, all right.

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Q Now, would you turn, please, Mr. Sinclair, to Section 8 of Plaintiff's Exhibit 7 and read the introductory paragraph and paragraph 8.2.

THE COURT: Do you understand?

THE WITNESS: Yes, sir.

THE COURT: Do it.

A Section 8 deals with appraisal reports. "In the preceding sections it was stated that good appraisal practice as defined by the society requires the inclusion of certain specific explanations, descriptions and statements in an appraisal report. These are summarized herewith. These requirements do not apply to reports prepared by staff appraisers for the exclusion and non-public use of the employer, but do apply to reports prepared by a public appraiser, that is one who offers his services for a fee to the general public."

Q Now, would you read, please, Section 8.2?

A Section 8.2: "Statement of objectives of the appraisal work. It is required that an appraisal report include a statement of the objectives for which the work was performed to determine a value, to estimate costs, to forcast an earning power, to ascertain certain facts, to reach a conclusion and to make a recommendation of action in a specific matter."

THE COURT: Recommendation of action?

THE WITNESS: Yes, sir, sometimes reports are made to recommend to your client a specific action and that has to be spelled out in the appraisal report.

Q Now, would you read the next paragraph on the bottom of the page?

A Yes.

THE COURT: The next after 8.2?

THE WITNESS: This is part of 8.2, your Honor.

MR. GARTNER: Part of 8.2, your Honor.

A "It is required that the meaning attached by the appraiser to any specific kinds of value or estimated cost which is the objective of the appraisal findings be summarized or stated in full in the appraisal report."

Q Would you read, please, Section 8.3, the first paragraph of Section 8.3.

A This is a statement of contingent and limited conditions to which the appraisal findings are subject.

"It is required that statements, information and/or data which were obtained by the appraiser from members of other professions or officials or other reliable sources, the validity of which affects the appraisal findings be summarized or stated in full in the appraisal report."

THE COURT: Does that mean that they must show the

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source, counsel? Or witness?

THE WITNESS: It means that if you relied upon someone else's information, technical and another appraisal report, legal instructions, anything of that nature, you must state it in your appraisal report.

THE COURT: Very well.

Q Now, Mr. Sinclair, I show you Plaintiff's Exhibit 4 in evidence and ask you whether you find in that appraisal report anything which complies with Section 8.2 which you just read, that is the statement of the objectives of the appraisal work?

THE COURT: 8.2 is concerned now.

A No, sir, there is a covering letter only.

THE COURT: It is a what, sir?

THE WITNESS: It is a covering letter or a letter of transmittal.

THE COURT: All right.

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Q Now, do you find anything which complies with Section 8.2 in Plaintiff's Exhibit 5, the so-called appraisal?

A I do not, sir.

THE COURT: Nothing at all?

THE WITNESS: Nothing at all, your Honor.

Q I call your attention to the requirement in 8.2 that there be a statement of the objectives for which the work was performed.

Do you find anything to that purpose?

A I see nothing like that in either the letter or the report itself.

Q That is Plaintiff's Exhibits 4 and 5?

A 4 and 5, yes, sir.

Q I call your particular attention also to the second part of 8.2, which says that it is required that the meaning attached by the appraiser to any specific kind of value or estimated cost which is the objective of the appraisal findings, be summarized or stated in full in the appraisal report.

Do you find anything in Plaintiff's Exhibits 4 or 5 in compliance with that?

A I see no, nothing of that nature in either 4, which is the letter, nor 5 which is the appraisal report.

Q Now, with reference to paragraph 8.3 of the

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standards of appraisal which says that it is required that statements, information and/or data which were obtained by the appraiser from members of other professions or official or other presumably reliable sources and the validity of which affects the appraisal finding be summarized or stated in full in the appraisal report and the sources given so that verification desired by any user of the report may be accomplished.

Do you find anything which complies with th. requirement?

A No, sir, I do not.

THE COURT: I want to ask this question at this point -- was there any indication that there were any outside sources in the report?

THE WITNESS: There is no indication, your Honor.

THE COURT: As to whether there were or were not?

THE WITNESS: No, sir, your Honor.

MR. GARTNER: We will connect this up later, your Honor.

THE COURT: Please do but continue now and get through with this witness, if you can.

Q Mr. Sinclair, what are the recognized procedures and practices for the appraisal of machinery and equipment, step by step?

A The first step after determining --

THE COURT: On what are you -- where do you get this? Is it from the paper?

THE WITNESS: No, sir. This is from the course of machinery and equipment which I teach.

Q And how long have you been an appraiser?

THE COURT: Of machinery?

MR. GARTNER: Of machinery and equipment, yes, your Honor.

A 25 years.

Q And that is your specialty. You testified to that, didn't you?

A Yes, sir.

MR. GARTNER: I think the witness is qualified as an expert.

THE COURT: Aska question, now, counsel.

MR. STREAM: I ask that the jury be instructed that the comment of counsel that he thinks --

THE COURT: Yes. All comments should be disregarded by you. Comments by counsel are not a part of the proof.

Now, will you please reframe your question so we will know what the particular question is?

MR. GARTNER: Yes.

Q Are you familiar, Mr. Sinclair, with the acknowledged

and accepted practice of professional appraisal of machinery and equipment? It requires just a yes or no answer at this point.

MR. STREAM: Excuse me --

THE COURT: Wait and see if there is an objection, first, Mr. Witness.

MR. STREAM: I object to the question. It presumes that there exists known standards and the witness must first state whether there are any standards --

THE COURT: Yes, sustained on that ground.

MR. GARTNER: He already has, your Honor. He has testified that these standards --

THE COURT: Maybe he has but let's have it over again at this part.

MR. GARTNER: Your Honor admonished me not to repeat questions.

THE COURT: Yes, but now I am telling you to repeat a question so we will have it immediately before us as one of the prerequisites.

MR. GARTNER: It is difficult to know when your Honor wants me to repeat or when you do not.

THE COURT: I will tell you. Do not worry about it.

Q Well, Mr. Sinclair, have you not testified --

MR. STREAM: Objected to. It is leading and in a

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preliminary form.

THE COURT: Yes.

Q Mr. Sinclair, are there recognized standards of professional appraisal of machinery and equipment?

A Yes, sir, there are.

Q What are those standards?

A Those standards include a recognition of the appraisal problem at hand, a definition of the value for which you are looking for, a detailed inventory listing of all the items that you are appraising. It includes a narrative portion of the report in which you spell out what you did, why you did it and how you arrived at your conclusion. This is so that anyone reading your report --

MR. STREAM: No, no, your Honor. From that point on, the answer is complete. No "so that is."

THE COURT: Yes, strike out the latter. You may add to it by questions.

Q Would you please describe for the court and jury the way in which those standards would be applied by a professional appraiser to the appraisal of equipment listed on Plaintiff's Exhibit 5?

THE COURT: Can you do that, Mr. Witness?

THE WITNESS: Yes.

THE COURT: All right.

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A The inventory of the items as listed would be taken. They would be described by make, model and serial number for proper identification. That would become the body of the report.

In the front of that listing would be a narrative section in which would spell out a complete definition of the values that you are looking for and the factors which affect the value.

A paragraph describing the general condition of the machines -- were they in good condition, excellent condition -- some of them might not be working and some might be working. You would describe the functional utility of the machine -- is it doing the job for which it was designed; is it capable of producing the end product and also what is the economics of the industry which services this machine and how does that affect, in your opinion, the final estimate of value which you are arriving at.

THE COURT: You test the operation of each machine?

THE WITNESS: Generally, if the machine is not -- if the plant is shut down at the time, yes, someone has to operate the machines so that you as a buyer know whether it is capable of operating or not.

If the plant -- if it is an operating plant you can observe it as you go through, that the --

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THE COURT: In other words, if it is going when you get there, you may observe it; but if the machinery is not going, you arrange to have it operated; is that correct?

THE WITNESS: Yes, sir, that is right. You have no other way of knowing whether the machine is operating, unless you see it in operation.

Q Now, you mentioned the description of the machinery. Plaintiff's Exhibit 5 has some statements of machinery.

Is that the kind of description you referred to?

A That is not the kind I would use, no, sir.

Q What kind of description would the standard of professional appraisal call for?

A It would call for --

THE COURT: Call for?

MR. GARTNER: Call for, yes.

THE COURT: Call for.

A A standard description of any piece of equipment calls for identification, first, by what type of machine it is -- what is the nomenclature for that machine -- is it a lathe, a drill press or whatever it is. It then calls for the identification of who made it -- what company made it.

It calls for identification by model and by serial number, if that is available, and by its rated capacity -- what is its size --

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THE COURT: Where do you get the rated capacity?

THE WITNESS: You can -- like on a lathe for example, you can measure the bed and the swing of a lathe.

If it is a punch press, it is generally marked on the machine -- that it is a ten ton or hundred ton press or whatever it is.

If it is a drill press, you can measure yourself and see that it is a 14-inch drill press or a 15-inch drill press or whatever.

THE COURT: All right.

Q The descriptions in Plaintiff's Exhibit 5, do they conform to that standard?

A Not that I can see, no, sir.

THE COURT: Do they at all?

THE WITNESS: No, sir.

THE COURT: In no respect, in any case?

THE WITNESS: Well, the only description that I see here, your Honor, is a Hauser 2-spindle profile miller. That is the description.

Q If you were doing it, how would you describe it?

THE COURT: You mean the same machine?

MR. GARTNER: Yes, the same machine.

Q What information would you put in?

A I would want the complete manufacturer's name. I

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THE COURT: He said he did.

MR. GARTNER: Well, what is that conclusion? That is what I asked him.

THE WITNESS: I would estimate that approximately 15 percent of the total value which is indicated on page 13, of $919,000 in round numbers would, in my opinion, be classified as general purpose machinery that could be --

THE COURT: Can you state how many machines would be so characterized?

THE WITNESS: No, sir, your Honor, because some of them include four or five groupings in one.

THE COURT: All right. Go on.

I do not know where that leaves us, exactly.

MR. GARTNER: I take it the admonition about comments is not applied to the Court as well as to --

THE COURT: Ask your questions, counselor. Do not argue about it.

MR. GARTNER: Of course, your Honor.

THE COURT: Oh, of course, let's continue the course.

Q Now, Mr. Sinclair, will you assume that a client tells an appraiser that his purpose of obtaining an appraisal of certain machinery and equipment is to know whether the value of the machinery and equipment is sufficient to assure

protection for the client if the machinery and equipment is to be put up as collateral for a loan which the client is about to advance or to guarantee --

THE COURT: Guarantee, wasn't it?

Q Orto guarantee. If you will assume that, will you then tell the Court and jury what type of appraisal value the appraiser should give the client?

A Under those set of assumptions, the value would be a liquidation value for off-sight use under forced conditions.

THE COURT: Well, we went over this before, I think.

Q Is there any indication in Plaintiff's Exhibits 4 and 5, 4 or 5, that that kind of value was furnished?

A No, sir, there is not.

THE COURT: Anything else for this witness? Do you have a long list of questions still on?

MR. GARTNER: Just one moment. A few --

THE COURT: You are almost through?

MR. GARTNER: I think so. If your Honor would like a recess --

THE COURT: No. I am willing to stay longer. I think it is too early for the recess this afternoon. It is a long afternoon and it should be about halfway. Let me decide when the recess should be.

MR. GARTNER: Of course, your Honor.

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Q Now, I will call your attention, Mr. Sinclair, to your statement in Plaintiff's Exhibit 4 on the second page beginning:

"It is difficult to project the market values of used machinery for the next two years. However, it is inconceivable that the value would be less than 60 percent of the appraised figures that we have established."

What kind of value is that in appraiser's terms?

A Well, I am not sure if I understand the sentence in its complete entirety, the way it's worded.

THE COURT: Well, read it again to yourself. If you don't understand it, I don't know how you are going to answer it.

THE WITNESS: Well, the difficulty, your Honor, is that there is a commingling of terms.

MR. STREAM: If the witness can't answer it, he shouldn't answer it and make an exposition --

THE COURT: Look at it and state whether or not you can answer the question.

MR. GARTNER: He said there was a commingling of terms.

Q What terms are commingled?

A It is difficult to estimate --

THE COURT: No. He says "What terms are commingled."

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Answer the question.

A In one case, we are talking about used machinery and the other case we are talking about the appraised figures which was the market value as defined in the thing and these terms are different, yet they are commingled in this sentence.

Q When you say the "thing," you are referring to Plaintiff's Exhibit 5?

A In the appraisal, yes, sir.

THE COURT: That's Exhibit 5.

Q So that you say that these two terms are commingled--

MR. STREAM: Please, your Honor. No more repetition of answers and questions.

THE COURT: Yes. The same -- you don't need to repeat the answer. You are inclined to do that and that takes double time.

MR. GARTNER: I'm sorry, your Honor.

THE COURT: Well, so am I. Proceed without it.

Q Is that commingling of those two terms a recognized practice in the appraisal industry?

MR. STREAM: Oh, come on. Your Honor, I object to the form of the question. It's improper. He is referring to a letter and not an appraisal and he is leading.

I can't think of anything else to make it worse.

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THE COURT: Sustained on all grounds.

MR. GARTNER: Mr. Stream is saying that the letter is not an appraisal? The Plaintiff's Exhibit 4 is not an appraisal?

THE COURT: You heard his objection, counselor.

MR. GARTNER: That's what I heard.

THE COURT: I am sustaining his objection. I think it's leading, in any event.

Q Let's confine ourselves, Mr. Sinclair, to the term "used machinery."

What does that mean in appraiser's terms?

A Used machinery generally refers to the price that it can be sold on the secondhand market.

THE COURT: Well, what does "used machinery" mean? That is what he asked you, I think.

MR. GARTNER: I asked him what "used machinery" means in appraiser's terms.

THE COURT: Yes.

All right, answer the question, then.

A Used machinery generally refers to the price that a machine can be sold to a used machinery dealer.

THE COURT: Would he have to be a dealer?

THE WITNESS: Not necessarily but, in general terms, it is used that way and, as such, it is not -- it's

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completely different from market value.

THE COURT: All right. Go ahead, counselor.

Q If an appraiser does not check each item of machinery and equipment in operation, what would be your opinion of any appraisal report which was based upon an observation of machinery without having seen it in operation?

A If each item is not seen in operation that must be stated in the statement of limiting conditions so that the client knows that you did not see it in operation. Otherwise, it's a misleading report.

Q Assume that an appraiser does not check the current manufacturer's price for the machinery and equipment.

Would any appraisal based upon that kind of a failure of examination be a valid appraisal?

A Not unless --

MR. STREAM: Not a valid appraisal. "Is it consistent with accepted --"

MR. GARTNER: I will accept that amendment.

THE COURT: Repeat the question, so we have it.

Q Would such an appraisal --

THE COURT: Phrase your questions so we have them.

Q Would an appraisal which was made without checking the current manufacturer's price for the machinery and equipment be consistent with accepted professional appraisal

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standards?

A Definitely not.

Q Would an appraisal of machinery and equipment which is made without making any indquiry as to the marketability of the machinery and equipment be an appraisal based upon accepted professional appraisal standards?

A No, sir, it would not.

THE COURT: What do you mean by marketability?

MR. GARTNER: What --

THE COURT: I asked him a question.

MR. GARTNER: I am directing him to your question.

THE COURT: Let him answer.

THE WITNESS: By marketability, I mean from the appraisal's terms, all the machines that I am appraising; is there a market for them; do they have a readily available market; if I don't need them, can I sell them to someone else or are they just a dog on the market that no one wants.

This is marketability because this affects the value of them. If I have a piece of machinery that everybody wants or there are a lot of buyers for it, I can get more money for it. If I have a piece of equipment that nobody wants, then its value is a failure.

THE COURT: I asked you how you determine marketability.

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THE WITNESS: You determine it by the general industry in which you are appraising.

Q How do you find the information? Do you read books, make phone calls? What do you do?

A You do a lot of research as an appraiser---

THE COURT: What kind of research? Research may be looking up words in a dictionary or something.

THE WITNESS: Each appraiser should have a research library in which he keeps trade journals, monograms, various other published data that pertains to that industry.

THE COURT: What do you mean by monograms?

THE WITNESS: There are booklets published by the U.S. Department of Commerce, by the various trade organizations out of Washington, D.C., so that if you are doing a job in any industry, almost -- tobacco, the milk industry -- you can go to these journals and get information that pertains --

THE COURT: Can you find sales of machinery, used machinery in those volumes?

THE WITNESS: Some of them you can. There are some journals which advertise machinery for sale.

There is a number of publications that deal directly with tools for specific industries.

THE COURT: Well, in an advertisement for a sale,

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is that an indication of what price was actually brought?

THE WITNESS: No, but it is certainly an indication of the activity within that market.

THE COURT: It is what is asked; that's all, isn't it? Go ahead. Can you answer that?

All right. I will withdraw my question.

Tk3-B B2 p.m.

Q Mr. Sinclair, if the machinery involved is specialized machinery with which the appraiser does not have any special acquaintance, would it be consistent with generally accepted professional appraisal practices for him to give an appraisal of fair market value without making any inquiry at all?

A No, sir, it would not.

Q Would it be consistent with professional appraisal practice for an appraiser to give a fair market value for machinery and equipment without making any inquiry into the economic conditions of the industry?

A No, sir, it would not.

Q The industry in which the machinery is used.

THE COURT: He says no. Go on to another one.

Q If the appraiser received information about the purported value of machinery and equipment from an employee of the company for whom he was making the appraisal, is it consistent with accepted professional appraisal practice

for that appraiser to give his report without stating that he is basing it upon that employee's information?

A No, sir, it is not. In fact, the value must be the appraiser's, not someone else's.

THE COURT: He should not have to consider that valuation stated by somebody else?

THE WITNESS: He can take it into consideration and, if he uses it, he should state it in his report.

Q If he takes into consideration a purported appraisal made by somebody else at some earlier time, is it consistent with accepted professional appraisal practice for the appraiser to base his appraisal on that prior report and not mention that prior report in his appraisal or in the accompanying letter?

A No, sir, it is not.

THE COURT: Is it proper in that case to consider the prior appraisal?

THE WITNESS: Yes, sir. I would like to -- but, I want to spell it out and tell my client I have done it.

THE COURT: All right.

Q Mr. Sinclair, assume that the prior appraisal was made for a different purpose. For example, suppose the prior --

THE COURT: No, no examples. Either general or

specific.

MR. GARTNER: All right. I will rephrase it.

Q Assume that the prior appraisal was made for a different purpose. Is it proper and in accordance with accepted professional appraisal practice for the appraiser to use and rely upon that prior appraisal when he is making an appraisal for a different purpose?

A No, sir. It would have no bearing if it was done for a different purpose.

THE COURT: Assume that the person who wants the appraisal tells the prospective appraiser that he may consult such a former appraisal.

Is it proper for him to consider that?

THE WITNESS: For an inventory purpose only but not for value because the values are different; there are two different purposes.

MR. STREAM: Did the witness say the values are different or the values may be different? I didn't hear what he said.

MR. GARTNER: He said they are different.

THE WITNESS: They are different if they are for two different purposes.

MR. STREAM: We'll get to that.

Q I call your attention to the statement in

Plaintiff's Exhibit 4, and I quote: "In our opinion, manufacturers utilizing most modern high precision equipment of this nature would pay important premiums over and above the values as established in our appraisal if this equipment were made available to them."

Is it in accordance with accepted professional --

THE COURT: State the time in your question. Was it at such-and-such a date.

MR. GARTNER: Thank you, your Honor.

Q Was it, in 1966, in accordance with accepted professional appraisal standards to make such a statement in a report if the appraiser had made no inquiry as to whether there was one manufacturer who was willing to pay important premiums over the prices which he stated in his appraisal?

A No, sir. I don't see how the statement could be made.

Q Now, just one general question:

With respect to all of the questions that I asked you before, as to whether the various cases were in accordance with accepted professional appraising practices and you gave you answers to those questions, do those answers apply to 1966?

A Yes, sir, they do.

THE COURT: And the answers which you gave, which you have given this afternoon to these questions, are your opinion, are they not? They are your opinion?

Well, what are they?

THE WITNESS: Some are opinion but some are also facts. The published code of ethics is a fact.

THE COURT: All right.

Q Insofar as you were asked to assume various facts and to testify with respect to standard appraisal practice, are those answers based upon your opinion derived from your experience?

A Yes, sir.

THE COURT: All right. That's all, then?

MR. GARTNER: Yes, your Honor.

THE COURT: Cross-examination.

No, I think we will have a recess.

MR. STREAM: Can we take a recess, now?

THE COURT: Yes. Have a recess.

(Recess taken)

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(Jury present)

THE COURT: You may proceed, Mr. Stream, with your cross-examination.

MR. STREAM: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. STREAM:

Q Mr. Sinclair, apart from the appraisals, what did you read in preparation for your testimony today?

A What did I read?

Q Yes.

MR. GARTNER: Objection as to form. Appraisals are not identified, your Honor. What is he referring to?

THE COURT: He didn't ask him about appraisals.

Would you read the question?

Listen and you will see it isn't what you think it is.

MR. GARTNER: He said, "apart from appraisals."

(Question read)

THE COURT: Objection overruled.

A Nothing.

Q Did you read Mr. Thaler's deposition?

A I did not.

Q Did you read the complaint?

A I did not.

Q Did you read any of the testimony given by Mr. Sinkler?

A I did not.

Q Did you speak with Mr. Sinkler?

A I never met the gentleman.

Q When was the last time before today that you met with the counsel for the plaintiff?

A A couple of months ago.

Q What did he show you at that meeting?

MR. GARTNER: I object, your Honor. This is getting into work product.

Q What did he show you --

MR. GARTNER: Counsel's work product.

MR. STREAM: This is a trial.

THE COURT: What if anything did he show you? He isn't asking to put that into evidence.

MR. STREAM: Quite right, your Honor.

Q What did he show you, Mr. Sinclair?

A I believe he showed me a letter, a copy of a telegram.

Q What do you mean you believe?

A We talked most of the time. There was nothing specific that I remember. I remember --

Q Excuse me.

A I remember seeing a letter which I believe was a copy of this, a copy of a telegram, I believe --

MR. GARTNER: When the witness says, "this," can he identify it?

THE COURT: Let him answer, sir.

MR. GARTNER: I would like him to identify it for the record, your Honor.

MR. STREAM: No, that is my problem.

THE COURT: No, this is out of order. Two can't be asking questions at the same time.

Q Go ahead.

A And that's what I can recall.

Q A letter and a copy of a telegram?

A Yes, sir.

Q And you met about a month ago?

A No, I would say it was closer to two months ago.

Q Two months ago. You met sometime in the month of February?

A February or January, yes, sir.

Q At Mr. Gartner's office?

A Yes, sir.

Q And did you ever meet or speak to a man named Louis?

A In what connection?

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Q Do you know a Norman Louis?

THE COURT: About this case?

A I do not know a Norman Louis, no, sir.

MR. GARTNER: I ask that counsel not shout at the witness this way.

THE COURT: Oh, that is not badgering the witness. He is asking questions and he has the right to ask cross-examination questions. Overruled.

MR. STREAM: Your Honor, may I ask the Court to direct counsel to let me cross-examine?

THE COURT: Please don't make comments, and you don't need to interfere --

Q Do you know a man named Howard Klein?

A I do not.

Q Did you ever read any letters written by Howard Klein to Industrial Plants Corporation?

A Not to my knowledge, no, sir, I don't recall.

Q Did you ever hear of Industrial Plants Corporation?

A Yes, sir, I have.

Q How many years?

A A good many years.

Q What kind of reputation has it got as far as you know?

A As far as I know, it has a good reputation.

Q By the way, have you got an appraisal of yours here?

A I do not.

Q None at all?

A None at all.

Q One of the appraisals that has all the stuff in it that you say it should have -- you don't have that with you, do you?

A No, sir.

Q All right. You said that you were a student at the Drexel Evening College for seven years?

A Yes, sir.

Q What degree did you receive when you finished your academic training?

A I did not receive a degree. In '45, '46 Drexel Evening College did not give a degree.

MR. STREAM: I move to strike out that part of the answer which begins with the words "in 1945 and 1946," and so forth.

THE COURT: Yes, strike it out.

Please just answer the question. Don't volunteer anything.

A When I went to Drexel Evening College they did not give degrees.

Q There is no question before you.

THE COURT: All right. There's no question before you. Don't volunteer.

Q Sir, if you can tell me yes or no it will save time. Do you have a college degree? Yes or no.

A I do not.

Q Thank you. Do you have a high school diploma?

A Yes, sir, I do.

Q What high school did you attend?

A John Bartram High School.

Q How do you spell that?

A B-a-r-t-r-a-m.

Q Where is that?

A Located 67th & Elmwood Avenue in the City of Philadelphia. I graduated in January 1942.

Q All right. You mentioned your membership in the American Institute of Real Estate Appraisers and you said you had an MAI number. Do you remember saying that?

A Yes, sir, I do.

Q That is in real estate appraisal, isn't it?

A Yes, sir, it is.

Q You mentioned something about an American Right-of-Way Association; right?

A Yes, sir.

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Q That is also real estate appraisal, isn't it?

A Not necessarily, no, sir.

Q Right-of-way involves machinery and equipment?

A Yes, sir, it does. It involves negotiators, it involves lawyers --

THE COURT: Does it involve machinery ordinarily?

THE WITNESS: Yes, sir, it does.

THE COURT: You mean a factory, for example?

THE WITNESS: Yes, sir, highways very often come through and take part of a factory.

THE COURT: It isn't common, though, is it?

THE WITNESS: Yes, sir, it is, a good many highways go through it.

THE COURT: All right.

Q Mr. Sinclair, are you angry at somebody?

A No, sir. You told me to keep my voice up and I am attempting to do that, sir.

Q All right, thank you. I don't remember you saying it, but thank you. All right. Now, what is the meaning of the term --

MR. GARTNER: I --

Q What is the meaning of the term "right-of-way" as you employed it?

A Right-of-way is a thing that's acquired to con-

struct an easement of some sort, be it a highway, be it a pipeline, be it a high-speed line. This is a right-of-way which is acquired across someone else's property for the construction of some public improvement.

Q You say it is a thing acquired. Is that the word you used, a right-of-way is a thing acquired?

A It's a right that is acquired.

Tk4-A B2 p.m.

Q Now, sir, in the ordinary course of events a right-of-way is a right over land, is it not?

A Yes.

Q All right. And are you not generally in connection with rights-of-way called upon to evaluate the land taken for that right-of-way?

MR. GARTNER: Objection. It has been asked and answered twice, your Honor.

THE WITNESS: Your Honor, do I answer?

THE COURT: I don't think he answered the whole thing twice. Overruled.

A I am not because the major portions of the urban highways acquire industrial property. Of course, land is part of it, but the industrial property --

THE COURT: Part of it is land, isn't it?

THE WITNESS: That's a small part.

THE COURT: You don't see any. Maybe you do on

the upper rights-of-way in a circle going up toward a ramp, but basically it is ramp, isn't it?

MR. GARTNER: I object to your Honor restating the testimony. The witness said three times it is factories that are involved and your Honor says basically the question is land. What is the witness supposed to do except repeat it is factories?

THE COURT: I withdraw my question, counselor.

MR. GARTNER: Thank you.

THE COURT: It was merely to save time. It is only for that purpose.

MR. GARTNER: Thank you, sir.

Q Mr. Sinclair, how many appraisals have you made, you yourself personally, sir, of high precision watchmaking machinery, high precision watchmaking machinery of Swiss origin?

A None.

Q Do you have any awareness, sir, in the sense of knowledge? Do you have any knowledge that certain machinery has multi uses?

A To me, if you are talking about general purpose machinery, yes, sir, I do.

Q All right. My question, sir, was a general question and that was are you aware that machinery in many

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instances, if not most instances, has more than one possible use?

A The way you phrase your question, I would have to say no, I am not aware of that.

Q You are not aware of that?

A No, sir.

Q All right. Are you aware, sir, that high precision watchmaking machinery and equipment can with certain changes be made usable for the manufacture of fuses, for example? Are you aware of that?

A Yes, if the --

Q Just yes or no, or "I don't know."

A Yes.

Q All right. Are you aware of the experience of a company called Hamilton Watch Company in 1967?

A I know Hamilton Watch Company, yes, sir.

Q Did you know that in 1967 it ceased to engage in the business of manufacturing watches? Do you know that?

A I believe it was shortly before that that they engaged --

Q You do belive that?

A Yes, sir.

Q Do you deny it was in the latter part of 1967?

A I do not deny anything.

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Q All right. In any event, you are aware that they ceased doing business in the latter part of 1967 or thereabout; right?

A Yes.

Q And are you aware, sir -- you can answer this yes or no -- that what they did was to take their plant intact on site and convey it to the United States Government for use in the manufacturing of fuses with the same machinery? Are you aware of that? Yes or no.

A I cannot answer that yes or no because I don't think that's a true fact.

Q All right. You don't think that's a true fact?

A No, sir.

Q I ask you, sir, this question: Do you know as a fact --

MR. STREAM: I withdraw that question.

Q By the way, have you ever at anytime visited the plants of Time & Micro Prescision Instruments in Strasburg?

A No, sir, I never have.

Q You never saw that machinery and equipment before in your whole life?

A No, sir.

Q Therefore, you testimony to this Court and jury

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is one hundred percent hypothetical; is that not the case?

A I am not testifying on value.

Q Is that not the fact?

A No, it's not the fact.

Q Your testimony today in this court was hypothetical?

A It is not hypothetical.

Q Was it not based on the facts which Mr. Gartner asked you to assume?

A It is not. My testimony is based upon standard appraisal procedure.

Q Right, sir.

A It had nothing to do with facts. It had nothing to do with what went on at Micro. My testimony deals with the appraisal procedure and what is procedure for an appraiser to period.

Q But it had nothing to do, did it, with the facts of what existed down at the Time & Micro Precision Instrument in Strasburg, did it?

A Only as it relates to the hypothetical question. That portion is hypothetical only and that portion only.

Q And, sir, if those assumption which you were asked to day by counsel when he put these questions to you upon the basis of which you turned to this manual of Accounting Ethics and Principles --

THE COURT: Exhibit?

Q -- if, sir --

MR. STREAM: I beg your pardon?

THE COURT: What exhibit is it?

MR. STREAM: Plaintiff's Exhibit 7.

Q If, sir, those assumption of fact which you were called upon to make when you turned to this exhibit were not so, it would change your answers to some extent, if not entirely; isn't that an absolute fact?

A You would have to give me another hypothetical and then I can.

Q It wouldn't change your answers?

A No, not necessarily. It depends upon the type of hypothetical question you put to me. Then I can answer you truthfully based on that assumption.

Q But if those facts were not so you answers would probably be changed, would they not?

A Any facts not so is going to change an answer, sir.

Q And in your answers what you did was to accept what counsel said to you as a fact in giving you answers; isn't that the fact?

A I did not accept them as a fact. I was asked on the assumption.

Q Yes.

A And my answer is based on that assumption. It is not based upon fact. It is based upon assumption.

Q You had accepted the assumed facts, is that it?

A That's what I was so instructed to do. Your Honor also instructed me to do that.

Q And you did it?

A Yes, sir.

Q All right. For example -- and this is just an example -- if you were to assume that they customer, that is to say Ajax Hardware Manufacturing Corporation, by its chief executive officers had told the defendant's Mr. Thaler when he was retained to do this particular appraisal which resulted in the preparation of Plaintiff's Exhibit 5 in Evidence, if at that time you were to assume that he was told to use somebody else's earlier appraisal and do it in twenty-four hours, that might change some of the answers you gave; isn't that a fact?

A You're asking me now --

THE COURT: Just answer his question.

Q Yes or no.

A I can't, your Honor.

MR. GARTNER: It has to be clarified, your Honor.

THE WITNESS: I have got to clarify what I am answering.

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Tk4-A B3 p.m.

THE COURT: I hear no objection.

Do you understand the questions?

THE WITNESS: No, I don't, your Honor.

MR. STREAM: I will start over again.

MR. GARTNER: I can't object on the ground he doesn't understand himself. He will have to do that himself. I understood the question.

THE COURT: You will have to --

MR. GARTNER: I did understand.

THE COURT: Proceed, Mr. Stream. No further interruptions, if you please, Mr. Gartner

Q Mr. Sinclair, by way of an illustration -- we will get into some detail a little later -- but by way of illustration, you stated that it was necessary in order to conform to the --

A Are we off the question you just asked me now?

THE COURT: He is asking you a question. Will you please listen until he finishes his question?

Q A new question now.

A A new question, okay, so I can keep it straight in my own mind, sir.

Q I wish you would.

THE COURT: You better start all over again, counselor. I regret these delays.

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Q Mr. Sinclair, during the course of your direct testimony you turned to these principles of appraisal practice of your organization.

A Yes, sir.

Q By the way, is that an organization a compulsary organization for all people who engage in the appraisal business?

A No, sir, it's not.

Q Are there appraisers in the United States of America who are not members of the American Society of Appraisers?

A Yes, sir.

Q How many members do you have in the United States of America?

A Without -- approximately 4800, I believe.

Q How many appraisers are there in the United States of America?

A I have no idea.

Q And are you required, sir, as a member of the association -- it is an association, isn't it?

THE COURT: What is?

MR. STREAM: The American Society of Appraisers.

A It's a society.

Q I beg your pardon?

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A It is a society of professional men.

Q Right.

A And women.

Q Do you understand the term "trade association"?

A We are not a trade association.

Q Are there membership dues?

A Yes, sir, there are

THE COURT: It is a professional organization or association; isn't that so?

THE WITNESS: Yes, sir.

THE COURT: All right.

Q And you become a member of it, you pay a fee and you become a member, is that it?

A No, you become an associate member to start with.

Q I see. And then after a while you become a member, but you pay a fee to get in; right?

A You pay dues.

Q Right. But you can be -- do you have to get into the association -- this is my question -- in order to do an appraisal, for example in the United States of America?

A No, sir.

Q And are there appraisers whom you know of who do good work who are not members of this association?

A Yes, sir.

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Q All right. By the way, you did say that Thaler was a senior member of the association?

A To the best of my knowledge, yes, sir.

Q All right. Now, sir, I want you to assume by way of a single illustration at this point that whereas you testified in your direct examination that in order to do an appraisal properly, you have to list names and machines and the sources and all those other things that you mentioned -- now I want you to suppose for the sake of argument-- this is my assumption.

A Your assumption?

Q I ask you to make.

A Okay, fine. You ask me to assume these facts.

Q Just stop and listen to my question.

THE COURT: Listen to his question and then if you do not understand it say so and we will have it read. Let us not have this fussing around I call it.

Q I want you to assume that you were called upon to do an appraisal and requested to do it in one day on 24-hours notice because it had to be done --

MR. GARTNER: Objection to the form, your Honor. He is asking for his personal views, not accepted appraisal practice.

THE COURT: All right. The objection is overruled.

MR. GARTNER: I thought what was sauce for the goose was sause for the gander.

MR. STREAM: I want the jury to hear the question

without interruption.

THE COURT: And I want no more comments from anybody. That is final.

Q I want you, sir, to assume the following facts: That Mr. Thaler was called upon to do an appraisal in one day and that Mr. Thaler was told that it had to be done in one day and Mr. Thaler was told that there had been an appraisal done two years before by a responsible appraisal company and that he was told to follow those words and generally to follow the earlier appraisal and update it, I want you to assume those facts -- and all I want you to do is tell me would it have been accepted appraisal practice under the Association to have disregarded some of the detailed data in the final appraisal which had to be delivered within 24 hours?

MR. GARTNER: Objection.

Q Yes or no.

MR. GARTNER: Objection, your Honor. There is no such evidence and there will be no such evidence. There is no such --

THE COURT: I will take it subject to my motion to strike.

MR. GARTNER: Thank you, your Honor.

THE COURT: Objection overruled.

MR. GARTNER: Thank you, your Honor.

Q Answer my question.

A You want my opinion?

Q No, I want you to answer yes or no.

A No.

Q You say that in spite of those circumstances the appraiser would have been obliged to go through all of the details which you described under oath in your direct testimony, is that what you asked this Court to believe?

A That is not what you asked me.

THE COURT: That is no answer. You may move to strike that answer.

Q Sir, is it your testimony under oath to this Court and to this jury that in those emergency or exigent situations, or such an emergency situation, an appraiser would be required nevertheless to do lip service to all of the details you said have to be included in an appraisal?

MR. GARTNER: Objection as to form, your Honor.

MR. STREAM: I will change lip service to read --

THE COURT: All right, reframe it.

Your objection is overruled.

MR. GARTNER: Overruled?

THE COURT: It is sustained. And it will be reframed.

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MR. GARTNER: Thank you.

Q Is it your testimony, sir, that in those exigent situations such as that, it would still be necessary for an appraisal to be accurate -- accurate -- to list the name of the machine, the manufacturer of the machine, the cost of the machine and to do all the other things which you say he should have done including reading monograms -- or did you mean monographs?

A Monograms.

Q Monograms, all right. Is it your testimony that he would have had to do all those things nonetheless to do a valid appraisal? Yes or no?

A No, it is not. It is not my testimony.

Q It is not?

THE COURT: It is not. That is your answer.

Q Did you ever hear of Hirschmann Corporation?

A I didn't hear the name.

Q Hirschmann Corporation?

A Yes, sir, I did.

Q So it is not your testimony, is it, sir, that an appraiser who does not follow each step which you described to this Court and to this jury before, an appraiser who does not follow all of those steps, it does not necessarily follow that the appraisal is wrong, does it?

A I cannot answer that question yes or no.

Q Does it necessarily follow, sir, that an appraisal which does not list the manufacturer of an item is an inaccurate appraisal?

A It is not necessarily right, either.

MR. STREAM: I move to strike out that answer.

THE COURT: Yes, strike it out.

Q Please sir, answer my question, not one I did not put to you.

A I cannot answer this question.

Q Well, then, you say to this jury you cannot answer and I will accept that. I will try one more.

A I cannot answer that yes or no.

Q I want you to try one more time. Here is the question.

Is it your testimony, Mr. Sinclair, that an appraisal which does not list the inventory of a machine listed in an appraisal by way of illustration, and an appraisal which does not list the inventory of the machine in question, is necessarily, that is to say must be a false appraisal?

A That is not my testimony.

Q All right. By the way, as you sit in this court today, you cannot express any opinion one way or the other, can you, as to whether the appraisal reflected in Plaintiff's

Exhibit 5 contains accurate figures as of the date of that appraisal, or wrong figures as of the date of that appraisal, can you?

A I can express no opinion.

Q How did you get to know Hirschmann Corporation?

A They are dealers in imported machinery. They are not appraisers to my knowledge.

Q Well, sir, they are more than dealers, aren't they?

A I know them as dealers.

Q Dealers in what kind of machinery?

A Imported machinery.

Q Any particular kind of imported machinery?

A I believe they deal in fine precision equipment.

Q Well, don't you know from the rich and varied experience that you had as an international -- member of an international appraisal organization needing all these monograms, didn't you also know that they were the agents for the Swiss cartel, high precision watch making industry?

A No, sir, unfortunately I have a fallacy of a bad memory. I have to go to my reference file for that.

THE COURT: What is that? What is that answer?

(Answer read.)

THE COURT: All right.

Q You don't know that to be a fact, sir?

A No, sir.

THE COURT: You have to go to your reference file you say, to find out what this company is or does?

THE WITNESS: I know they deal in --

THE COURT. Can't you answer my question?

THE WITNESS: Yes, to find out specifically what they do, sir, I would have to go and look them up. I know generally what they do.

THE COURT: All right.

Q Mr. Sinclair, you told us in your direct examination that your expressions of opinion concerning acceptable appraisal practices derived from the provisions of the appraisal principles marked Plaintiff's Exhibit 7; isn't that right?

A Yes, sir.

Q I didn't hear you.

A Yes, sir.

Q You mentioned that there were various kinds of value, remember that?

A Yes, sir.

Q You mentioned that there was a value called sound value, do you remember that?

A Yes, sir.

Q And then you said there was a value called fair

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market value on sight, right?

A Yes, sir.

Q And then you said there was fair market value off sight?

A Yes, sir.

Q Then you said there was a liquidating value under orderly conditions, right?

A Yes, sir.

Q And then you said there was a liquidating value under other conditions?

A Yes, sir.

Q Meaning forced sale conditions, right?

A Yes, sir.

Q Do you remember saying there was such a thing as fair market value on sight, right?

A Yes, sir, I do.

Q And then you told his Honor and the jury that you did not have any idea what the term "fair market value" meant; is that right?

A When it pertains to machinery and equipment by itself it is a meaningless term.

Q Meaningless term, you don't know what the terms mean?

A Yes, sir.

Q Let me ask you this: In any respect have you ever heard the term "fair market value?" If you haven't say I cannot.

A Yes, I can define it, too.

Q Do that.

A Fair market value and market value are synonymous terms --

Q Just define the terms without telling us about synonyms and antonyms and anything else.

A It is the highest price in terms of money that an item will bring if exposed for sale on an open market allowing a reasonable time to test that market and both buyers and sellers buying without duress and both buying --

Q Buying without duress?

A Duress, and both buying with the full knowledge of the capabilities of the products -- of the item they are buying.

Q Thank you very much.

Now, if you were to be asked to define the term "on-~~sight~~site," or "in-place," -- and those are synonymous terms, aren't they?

A Yes, sir.

Q On-~~sight~~site or in-place?

A Yes, sir.

Q How would you define that term "in-place?"

A Market value in-place I would define the same way, except I would add at the end of the definition that this value is the value of the item installed in place and operating and functioning as part of an operating facility.

Q And, sir, isn't it an absolute fact that Plaintiff's Exhibit 5 is precisely that type of appraisal? I ask you to pay particular attention to the fact that on the last page of the exhibit is a factor of $137,000 added to fair market value called in-place value. Do you see that there?

A Yes, sir, I see it.

Q All right. Now, isn't that market value accompanied by a factor for in-place value the hallmark of a fair market value in-place?

A No, not really, sir.

Q Not really?

A Because --

Q Tell me what that appraisal is which says "market value in-place." Tell me what it is.

A It doesn't say, sir.

Q Well, you tell me, sir, what this appraisal is? Let me put it to you this way: You testified on direct testimony that this appraisal was certainly -- I am going to use your own words -- certainly doesn't indicate forced

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liquidating value?

A That's right.

Q That is a fact, isn't it?

A That is a fact, yes.

Q Clear as can be; is that right?

A Right.

Q We know what it isn't now. Now we will find what it is.

A May I see it?

Q You will in a minute. I want you to assume that you have an appraisal before you which lists every item in a plant containing machinery and equipment and at the end of the itemization is a total or an aggregation of values called total fair market value and a figure and then an additional for in-place value and then total in-place value.

How do you define total in-place value in that connection?

A I cannot define it in that context because it is a misnomer.

Q Not because, sir. You cannot define it, I accept that answer. You cannot define it?

A No.

Q Now, can you, sir, tell me whether in-place value can be defined at all?

A If it is used in connection with market value, which is the highest place in terms of money, you cannot put an additive to the highest place. If you already defined market value as being the highest price in terms of money, then you cannot put an additive in the highest price.

Q We will test that now, we will just test that little theory, sir.

What does the term "in-place" mean? Tell us once again so the jury understands it.

A In-place by itself doesn't mean anything. When you use it with fair market value in-place then it means something.

Q Will you tell us what it means in that connection?

A Market value in-place means the highest price that that piece of equipment will bring installed, in place, operating and functioning together with all the rest of the machines that go to make up that manufacturing operation.

Q All right.

Now, what is the term "market value or fair market value for liquidation under orderly conditions"-- what does that mean?

A Liquidation value under orderly conditions means the value that the owner of that machine will get if he sells it under orderly conditions.

Q You mean over a period of time?

A Over a period of time.

Q Without the pressure of an auctioneer's hammer?

A May I answer your question?

Q No, sir, you answer my questions.

MR. GARTNER: I object to this.

Q Without the question of auctioneer's hammer?

MR. GARTNER: I object. He goes barreling through.

THE COURT: All right, your objection is sustained. I told Mr. Stream to slow down.

Q You mean over a period of time, Mr. Sinclair?

A I was halfway through the other question.

Q Answer mine, it will go faster. Will you do that, Mr. Sinclair, please?

A What do you mean by "a period of time?"

Q What do you mean by a period of time? You said an orderly transfer or orderly sale over a period of time.

A Yes, that can be a sale that takes place in one day, six weeks, it can take place in a year.

Q It doesn't mean a forced sale liquidation, does it?

A A forced sale --

Q Does it, yes or no?

A I can't answer it yes or no.

Q Does it mean a forced sale in liquidation under an auctioneer's hammer?

A No, sir, it does not.

Q All right. That is another kind of a sale, isn't it?

A Yes, sir, it is.

Q All right. And a forced sale under an auctioneer's hammer involves a number of external shifting or variable factors, doesn't it, sir? Do you understand me?

A No, I do not.

Q All right, well, for example, if an auction sale, if a forced sale in liquidation at public auction is held in the Himalayan Mountains on January 1, that is a different story from an auction sale held on December 21 on Miami Beach; is that right?

A I have no knowledge of the Himalayas.

Q You mean you could not make a statement based on location, that that represents a factor?

A It is a different type of local, sure.

Q Different kind of values can be expected, isn't that so?

A I would have to assume so.

Q Sure you would. And a sale, for example, in Strasburg, Pennsylvania, in November would also, if it was a forced sale in liquidation, would also have other factors, for example, the number of people that were advertised, that

received the advertisement, that would be a factor, wouldn't it?

A Yes, anything would be a factor.

Q Sure, and the number of people that showed up for the auction, that would be another factor, too, wouldn't it?

A Yes, sir.

Q Right. And the extent of the advertising, that would be a factor, too, wouldn't it?

A Are you asking me specific questions about an auction sale?

Q Yes, very specific questions. Would you answer that question I put to you, sir?

A The extent of the advertising affects an auction sale, yes, sir.

Q All right. And the condition of the market at the time of the auction also is a variable that would affect price, isn't that right?

A That is my economic obsolescence I have been talking about.

Q Economic obsolescence, that is fine?

A Yes.

Q I see. And if, for example, the bottom had fallen out of the market between the dates that an on-sight value appraisal had been made and the dates of an auction 14 months

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later -- assume that --

MR. GARTNER: Objection, your Honor. The assumption is contrary to the evidence or any evidence that will be presented in this case.

THE COURT: I cannot tell until the evidence is admitted.

MR. GARTNER: I move it is subject to being stricken if it is not connected, your Honor.

THE COURT: Very well.

Q I want you to assume that on the one hand you have an on-sight fair market valuation appraisal reflecting fair market value on-sight by your definition, okay?

A Okay.

Q Assume that. Going plants, okay? Right? I want you to assume that 14 months later there is an auction sale under an auctioneer's hammer in forced liquidation at Strasburg, Pennsylvania, where items are going one by one as second-hand odd lot machinery and being sold piece by piece, would an appraisal of the first kind I mentioned give you any idea of what would be realized at that auction sale? Yes or no?

MR. GARTNER: Objection as to form and contents. It is a compound question.

THE COURT: Overruled.

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MR. GARTNER: It is unintelligible, it is contrary to any evidence that is here and will be presented.

THE COURT: I already stated it must be connected. Overruled otherwise.

MR. STREAM: It will be connected.

Q What is your answer?

A Under the assumption that you presented with one factor, I don't think Strasburg would have any bearing on it, because Lancaster County happens to be a very beautiful place in November, but the two values have no relationship, they are completely apart.

Q Thank you, sir.

THE COURT: What values?

THE WITNESS: The two values he asked me about, your Honor.

THE COURT: All right. I want to see the exhibits. I think it is 4 and 5.

MR. GARTNER: Here is 4, your Honor.

THE WITNESS: Mr. Stream has 5, I believe.

MR. STREAM: I do not.

THE WITNESS: You did. You took it from me, sir.

THE COURT: Somebody must have it.

MR. STREAM: May I continue, your Honor?

THE COURT: Let's take a look at the principles of

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appraisal practice of your society.

A Yes, sir.

Q Your international society of which you are a senior member.

A That is correct.

Q Like Mr. Thaler. Are you aware, sir, that in Article 3.1 it is stated that -- and I quote -- "The appraiser may consider his client's instructions," are you familiar with that, sir?

A Yes, sir, I am.

Q Have you subscribed to that?

A Yes, sir, I do.

Q And it says, "and/or may obtain other professional advice," right?

A Yes, sir.

Q "But the selection of the apposite kind of values is the appraiser's responsibility," is that right?

A That's right.

Q What does "apposite" mean?

A Where are we?

Q Page 241, paragraph 3.1 on the eighth line -- seventh line. Do you see the word "apposite kind of value"?

A No, I do not.

MR. GARTNER: Excuse me, it is because counsel is

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selectively reading. If he reads the whole paragraph perhaps the witness may understand.

THE COURT: You may cross examine or redirect afterwards.

MR. GARTNER: Counsel objected to my reading.

THE COURT: The objection is overruled.

Q What did you say you were, the president of this association?

A I am the International President, yes.

Q I see. Did you have anything to do with the adoption of these rules, whatever the principles you call them, Plaintiff's Exhibit 7?

A In 1964, no, sir, I was not on the Board of Governors then.

Q I see. But you have read them, haven't you?

A Yes.

Q Look at line 7 of paragraph 3.1, "but the selection of the apposite kind of value is the appraiser's sole responsibility." Look at that where my number is and then tell the jury what the word "apposite" means, a-p-p-o-s-i-t-e, Mr. President.

A I am not a parliamentarian. I don't know what they mean.

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THE COURT: You do not understand the verbiage in these instructions or these, whatever they are, these rules or practices, then?

THE WITNESS: I know what these instructions mean.

THE COURT: What does it mean?

THE WITNESS: It means that the selection of the appropriate value, the kind of value or estimate that the appraiser comes up with, is his responsibility. No one else's. And he cannot pass the buck to someone else.

Q How do you define the word "apposite," not opposite but apposite.

MR. GARTNER: Objection. The witness already answered the question. He just said it means appropriate.

MR. STREAM: If that is his definition, let him say it.

THE COURT: If that is his definition, sustained.

MR. GARTNER: Thank you.

THE COURT: Once in a while, you are right.

MR. GARTNER: Once in a while I am right; thank you, your Honor.

THE COURT: Twice in a while.

MR. GARTNER: It gives me hope.

THE COURT: All right. I have ruled.

MR. STREAM: I am waiting to have counsel tell me

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what kind of hope he wants.

MR. GARTNER: t made my day.

THE COURT: All right. Never mind. This is just a little nearly off the record matter.

Q Now, are you also aware, sir, that in paragraph 6.2 of these rules and regulations, so-called, or principles, as you call them, it says that the procedure and method for determining the particular value in question is a matter for the appraiser himself to determine.

Are you aware of that?

A Yes, sir, and I agree with that.

Q And that -- I can tell you the quote -- and he cannot be held responsible for the result unless he has a free hand in the process.

Do you find fault with that?

A No, sir I do not.

Q And are you also aware of the fact that these rules and regulations in paragraph 6.4 say that he has a right to take the material from other engineers and include it in his appraisal.

Are you aware of that?

A Yes, sir, and I am also aware that he has --

Q Answer yes or no.

THE COURT: Answer the question. Do not throw in

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anything else.

Q Are you aware of that?

A Yes, sir.

Q You told us a little while ago that if his report did not specifically tell the client what it was he was relying upon, it was a bad appraisal, right?

A You cannot --

Q Did you say that sir, yes or no?

A Yes, sir. You cannot take half a method and use it.

MR. STREAM: Just a second. Yes or no.

MR. GARTNER: Could the witness be allowed to answer.

THE COURT: He should not be allowed to volunteer. Would you please help a little bit?

MR. GARTNER: He was asked what his testimony was.

Q Yes or no, sir.

MR. GARTNER: His testimony was not given by saying yes or no.

THE COURT: Well, so what? I do not understand your point.

MR. STREAM: May I have the last question and answer read to this jury.

THE COURT: It takes time when these things are thrown in gratuitously.

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MR. STREAM: Your Honor, with the permission of the Court may I have the last question and answer reread to see if it is complete.

THE COURT: Yes.

(Record read.)

Q Do I understand, sir, that your testimony is that if a client tells an appraiser to use certain material that he can use it? Is that a fact?

A That is a fact.

Q And if the client knows he uses it, does it really make any difference whether he refers to that fact in his report?

A Yes, sir, it makes a great deal of difference.

Q Does it? To you it does?

A It makes a great deal of difference to a professional report.

Q Does it destroy the accuracy of it insofar as it is set forth, rather, prices and values?

A I have no way of answering that type of question.

Q Isn't it a fact, Mr. Sinclair, that these rules and regulations or these suggested methods for the preparation of an appraisal report constitute the best of all possible worlds, the idealized system of appraising? Is that not a fact?

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A No, sir, they do not.

Q They are not the best of all possible --

A Not to be characterized as you have so said.

Q Let me ask you this question.

Do you know whether or not appraisers who are not members of your association are required, in order to do appraisals consistent with reasonable and accepted appraisal principles, to follow the guidelines specified in your rule?

A Yes, sir, they do.

Q Must they?

THE COURT: He did not ask you that. Are they required is what he asked you.

THE WITNESS: Your Honor, I cannot answer a question like that.

Q Then don't.

A You are asking me only --

THE COURT: Do not argue with the lawyer, Mr. Witness.

MR. GARTNER: It seems unfair that the lawyer can argue with a witness and the witness --

MR. STREAM: That comment is unfair and the jury should be instructed.

THE COURT: Disregard that comment and, Mr. Gartner, please do not speak so that the jury may hear you.

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MR. GARTNER: In making my objections I have to speak.

THE COURT: Oh, of course. Of course. I do not mean that.

MR. GARTNER: That was intended as an objection, your Honor, that I object to the counsel --

THE COURT: When you make an objection I wish you would -- wait a minute.

When you want to make an objection, you will stand and you will address the Court.

MR. GARTNER: Yes, your Honor. That is what I am doing. I am objecting to counsel --

THE COURT: But you are not to make any comments which are heard by the jurors, no matter if they are addressed to Mr. Brill.

MR. GARTNER: I was not talking to Mr. Brill.

THE COURT: All right. I take your word for it.

MR. GARTNER: Thank you, your Honor.

I object to counsel constantly interrupting the witness and then telling the witness that he cannot argue with him. He is doing the interruptions which causes the witness to try to respond.

THE COURT: I instruct him accordingly. However, as I recall it, the witness said he could not answer the

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question.

THE WITNESS: I said I could not answer yes or no, your Honor. I can answer the question.

THE COURT: Well, that is about the same thing. It is not far off from it.

Q Mr. Sinclair, in this appraisal, Plaintiff's Exhibit 5, do you have that in front of you?

A No, sir, the Court has it.

THE COURT: Here is a copy.

Q I have a copy.

I want you to forget for the moment all about the following aspect: I want you to forget, sir, that you, sir, and you say, sir, that an appraisal must have or should have, I don't care which term you employ -- must have or should have a statement of the objectives. I want you to forget for the moment that you testified that an appraisal has to have a specification of the reports upon which it relies in whole or in part and I want you to forget that it does not have what you say it should have which is to say --

MR. GARTNER: Objection to the form. This is not a question. Counsel is telling the witness to forget certain things. What kind of a question is that?

THE COURT: It means to eliminate them.

Objection is overruled. Let him finish the question

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at least, counselor. You should not interrupt.

Q I want you to put aside, forget for the present, that you say that the appraisal that is in front of you, Plaintiff's Exhibit 5, should also have in it a definition, a section with a definition. Putting all those things to the side, I want you to point to any one, two or more figures in that appraisal which are wrong.

MR. GARTNER: Objection, your Honor. The witness has testified that he has no opinion as to the correctness or incorrectness of the figures.

MR. STREAM: I am asking him now whether that applies to the specific figures in that appraisal.

THE COURT: I will sustain it.

MR. GARTNER: Well, your Honor --

THE COURT: Wait a minute.

MR. GARTNER: Thank you. I am sorry I interrupted you. I did not realize you were about to sustain me.

THE COURT: You saw I was going to say "sustained."

MR. GARTNER: Thank you, your Honor.

THE COURT: Do not determine your rise or fall by observations. Wait until I talk and wait until your adversary gives his questions before you interrupt him.

Now, that is a must. Do not forget it.

MR. STREAM: You know, your Honor, I think it is

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unseemly, and I must say that, for counsel in the presence of the jury to treat this as some kind of an escapade or joke when your Honor sustains an objection.

MR. GARTNER: I object to that strenuously.

MR. STREAM: I think this is the wrong way to parade before a jury.

MR. GARTNER: I object to that and I am not treating this as an escapade or a joke and I think that is an outrage and I would ask the Court to admonish counsel. This is not a joke. I have had a very strenuous day in court.

THE COURT: All right. Disregard what Mr. Stream has said and disregard what Mr. Gartner has said and continue at least in an attempt to obey what instructions I have given you with respect to questions and objections.

Q Mr. Sinclair, would you --

THE COURT: And let me say to the jury that counsel for the defendant here has, under our jurisprudence and procedures, an absolute right to cross examine and the Court has to pass only on the objections.

MR. STREAM: Thank you.

May I have a copy of Plaintiff's Exhibit 4.

THE COURT: Here it is, and 5.

MR. STREAM: Just 4, your Honor.

THE COURT: All right. Take both of them.

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MR. STREAM: Thank you.

At this time may I ask the Court to be good enough to allow me to mark as Defendant's E this letter of October 7, 1966.

THE COURT: Give it to the clerk.

xx (Defendant's Exhibit E marked for identification.)

MR. GARTNER: I object to it, your Honor, there is no foundation for it. Counsel --

MR. STREAM: It is only identification.

THE COURT: Wait a minute. I overrule your objection. You have not heard an offer of it yet. You are premature, Mr. Gartner. You are nervous.

MR. GARTNER: No, I am not nervous, your Honor.

THE COURT: At least you are premature. If you are tired we will adjourn at this time.

MR. GARTNER: No, thank you, your Honor.

THE COURT: I do not think I should. You want this witness to be completed.

Q Mr. Sinclair, would you be good enough to look at the two last paragraphs --

THE COURT: Wait until he questions him, sir.

MR. GARTNER: Your Honor, this is the very letter which we discussed in your chambers earlier and which counsel

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stipulated that the original would be introduced and he is now trying to question the witness with knowledge to an underlined copy which somebody underlined.

Q Would you be good enough, sir --

MR. STREAM: Your Honor, until I make the offer, may I be allowed to continue?

THE COURT: Yes, finish your question.

And do not interrupt him. Otherwise we are going to stop for the day -- with a few other instructions.

Go on, counselor.

Q Would you look at the last two paragraphs of Defendant's Exhibit E for identification, paying particular attention to the material which is underscored and note that it is a definition.

Would you do that, please? Read it to yourself.

MR. GARTNER: I object, your Honor. There is no identification of this document. There is no basis upon which the witness can be allowed to look at it and to examine it. He has not asked the witness whether he knows it or can identify it.

THE COURT: It is not in evidence. The objection must be sustained.

MR. STREAM: You sustain the objection. I will withdraw the objection and do it differently.

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THE COURT: You withdraw the question, not the objection.

Q Mr. Sinclair, I want you to listen to this definition of market value and I want you to tell me whether or not you find it acceptable.

Would you do that?

A Yes, sir.

Q The term "market value" as defined by the American Society of Appraisers, is the highest price estimated in terms of money which property, real or personal, will bring if exposed for orderly sale in the open market allowing reasonable time to find a purchaser or purchasers who buy with knowledge of all the uses to which it is adapted and for which it is capable of being used.

It is the price that should be expected if a reasonable time is allowed to find a purchaser and both the seller and the prospective buyer are fully informed.

Do you accept that definition?

A Without question, if you are talking about real estate. If you are talking about machinery and equipment, I think it must be qualified with either on-sight or off-sight, in-place and must have another additive.

Q Supposing I add to it, the term "in-place value" is defined as the value of the machinery and equipment

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contained in a plant already in use or ready to be used as a complete installation for the manufacture of a product or products.

A Then market value and market value in-place are one and the same thing.

Q And you accept that definition?

A Yes, sir.

MR. STREAM: I reserve the offer, your Honor, until I establish a foundation during the reading of the testimony.

THE COURT: Very well.

Q That, of course, is not forced sale liquidation value, is it?

A It is the highest price --

Q Is it? Yes or no?

A No, sir, it is not.

Q You told us that you had never appraised high precision watch making equipment, right?

A That is correct.

Q Did you not know that the equipment down at Strasburg in the plant of Time & Micro Instruments was high precision watch making equipment which had been exported from Switzerland and imported into the United States? Did you know that?

A Yes, sir, I knew that.

Q And that is precisely the kind of equipment which

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you say you never appraised, right?

A I had nothing to do with the value. I did not appraise the value --

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Q I didn't ask you that. I said you told us that you had never in your experience made an appraisal of that kind of high precision Swiss manufactured watch-making machinery and equipment. Isn't that right?

A That's not what you asked me.

Q Is it a fact that you never did make an appraisal of such high precision Swiss made watchmaking machinery and equipment?

A No, sir, that is not --

Q Have you ever?

A Yes, sir, I have but I have not done a watch-making plant. I have done equipment, as such but not a plant.

Q But you have never done a plant in place, correct?

A Yes, sir, that is correct. That is different.

Q And in your experience you don't know, do you, sir, and if you do, you will tell me and if you don't, I am sure you will tell me, you don't know whether watchmaking equipment can be used for, for example, fusemaking, do you?

THE COURT: For fuses?

MR. STREAM: Fuses, yes.

Q Do you know that?

A I know certain equipment is adaptable for fuse equipment.

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Q You don't really know that part of the industry, do you?

A No, sir.

Q One final question and I am through, Mr. Sinclair, or maybe two but just about that.

You said, when asked to define the term "used machinery," I think you said, "Used machinery I define as meaning used machinery."

Do you remember so testifying?

A No, sir, I don't remember that.

Q You don't remember so testifying? Well, are you able to define the term "used desk"? Could you define the term used desk?

A A used desk is one that is not new.

Q And isn't used machinery machinery that isn't new?

A Yes.

Q And isn't used machinery also found in an appraisal made of machinery and equipment on site as part of an integrated, going operation? Yes or no.

A You mean some of the eqiupment in there is used?

Q Yes.

A Naturally, yes.

Q Sure. In other words, if you are called upon

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to do an appraisal in a plant that has been operating for a few years, it is used machinery?

MR. GARTNER: Objection. There is no testimony that the plant was operating for a few years and there will be no testimony that the plant was operating for a few years.

MR. STREAM: We will see if there is any testimony about the operations. That's the plaintiff's case, not mine.

Q I ask you to assume that if a plant contains used machinery, then a plant contains used machinery; all right?

A Yes.

Q Is it possible to appraise that plant and establish its fair market value on site as a going business?

A Yes, sir.

Q Even though it has used machinery?

A Yes, sir.

Q And it is possible, also, to do the same kind of an appraisal on site if it is new machinery, right?

A I suppose so, yes.

THE COURT: Well, don't you know?

THE WITNESS: Well, I have never seen a plant that had all new machinery in it.

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THE COURT: That doesn't make any difference. Once in a while that might take place.

MR. GARTNER: He is trying to be accurate, your Honor.

THE COURT: All right. No comments. Once more and there is going to be a stopping this afternoon, gentlemen.

Q It doesn't matter, does it, whether it is used machinery or new machinery? If you are called upon to do an appraisal of the fair market value on site, you do it, right?

A Yes.

MR. STREAM: No further questions.

THE COURT: All right. That's all.

Any redirect?

MR. GARTNER: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. GARTNER:

Q Mr. Sinclair, what do you know, if anything about the business of the Industrial Plants Corporation?

A Very little, except from my knowledge of them I always thought of them as being auctioneers.

THE COURT: Not what you thought about them.

Q You new them as auctioneers?

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A Yes, sir.

Q You didn't know them as appraisers?

A No, sir, I did not.

Q When you said they had a good reputation, did that refer to auctioneering?

A Yes; the buying and selling of industrial plants.

THE COURT: That is a leading question.

Q Now, you also said that certain precision equipment with changes can be adaptable to manufacture fuses..

What would be involved in the adaptation in terms of cost?

THE COURT: How is he qualified, counselor, to go into that?

MR. GARTNER: He was asked the question on cross-examination. He testified about it.

THE COURT: I know, but how is he qualified? He is your witness.

MR. GARTNER: Well, if he has knowledge, I am asking him if he has knowledge.

THE COURT: Well, repeat the question, reframe it. It's not the same question that you originally asked.

MR. GARTNER: Your Honor instructed the jury that it is part of our jurisprudence that counsel for the defendant make cross-examination. Is it not also part

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of our jurisprudence that counsel for the plaintiff may examine?

THE COURT: Yes, yes, and that's what this redirect is.

MR. GARTNER: Well, I am trying to examine, your Honor. There has been no --

THE COURT: Repeat, reframe your question. I don't think it is understandable.

MR. GARTNER: There is no objection to the question.

Q What is your experience and knowledge, if any, as to the cost of adaptation of such precision machinery in order to manufacture fuses?

A The more highly specialized and more highly precision a piece of equipment is, the more costly it is to adapt it to another use and, without making a detailed study, I couldn't come up with any opinion on this.

Q Do you have any knowledge as to the degree of specialization of the precision equipment listed in Plaintiff's Exhibit 5, which is the appraisal report? Is that highly specialized equipment or is it low specialized equipment?

A The major portion of it is highly specialized equipment.

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Q What if anything did you know about the capability of the Hamilton Watch plant to make fuses?

A It was known throughout the area that Hamilton Watch --

THE COURT: No. That's improper.

Read the question.

(Record read)

A I knew that a portion of the Hamilton Watch plant had been converted to Government use.

MR. STREAM: Excuse me, sir. Will the Court inquire whether he knew it personally or did he learn it through hearsay? If it is hearsay, I will move to strike it.

THE COURT: I don't know. You will have to do that on recross, I guess, counsel.

MR. GARTNER: Thank you, your Honor.

THE COURT: All right. Your redirect ought not to be long.

Q You were asked whether if an appraisal report were rendered in exigent circumstances, I believe was the term used, in an emergency or in a hasty manner or, to use counsel's own words, at one time, if it was an Operation Haste, and an appraisal report was called for in haste, would it be in accordance with proper appraisal practices

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not to mention that in the appraisal report.

A Not in my opinion. It should be mentioned.

Tk5-B B2 p.m.

Q If it were mentioned in the report, that would be in accord with standard appraisal practice?

A Yes. I think anything which is unusual should be mentioned.

THE COURT: All right. Just answer yes or no, won't you, please.

Q You defined, in the course of your testimony, the term "fair market value."

A Fair market value is basically a real estate term and deals with real estate.

THE COURT: We have had all of this before, counselor.

Q With respect to Plaintiff's Exhibits 4 and 5, which I show you -- Plaintiff's Exhibit 5, the appraisal report, and your attention was called to the last page which uses, in one place, "fair market value" and, in another place, "in place value."

Is it in accordance with proper and standard appraisal practice to separate those terms and give them different values in an appraisal with respect to machinery and equipment?

A No, sir, it is not.

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THE COURT: Why not?

THE WITNESS: Because market value implies the highest price in terms of money and if you put an additive on top of that, how can you put something which is already defined as the highest price? How can you put an additive to something which is the highest?

THE COURT: But, it is true, is it not, the value is more when it is in place?

THE WITNESS: Right.

Q But the highest value includes the assumption that it is in place, does it not?

A Yes.

Q So that if the fair market value is the proper term to be used there, the value which was there given already included the in place value?

MR. STREAM: Just a second.

Q Isn't that correct?

MR. STREAM: Just a second, sir. I object to that. He is asking the witness to interpret what is in there. He can say --

THE COURT: Sustained. I think, after all, it becomes somewhat of a semantic question, actually.

MR. GARTNER: Well, I think to some extent, your Honor, this case is about semantics.

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THE COURT: Yes, and this particular phase of it is about semantics.

MR. GARTNER: The meanings of terms.

THE COURT: It is conceded that the value is more when the machinery is in place. I think the witness agreed to that, didn't he?

MR. GARTNER: I think your Honor is misstating the testimony and the witness's testimony --

MR. STREAM: No. The Court is not. That's exactly what he said.

MR. GARTNER: Please. Can I address the Court without Mr. Stream interrupting me?

THE COURT: Yes., but he can reply, under the circumstances. I am not going to cut him out, cut him off.

MR. GARTNER: If it please your Honor, I think --

THE COURT: You finish up and then I will listen to Mr. Stream.

MR. GARTNER: I would like to ask Mr. Sinclair this question:

Q If the term fair market value means the highest possible value that the implement or the thing can bring, does it or does it not include the in place component?

MR. STREAM: Objection. Answered before.

THE COURT: Sustained.

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Q Now, your attention was called, Mr. Sinclair, to a provision of the Plaintiff's Exhibit 7 which says that the appraiser has a free hand or should have a free hand in selecting the process for his appraisal.

Does that free hand include the right to make no inquiries at all?

A No, sir.

Q You testified that if an appraisal report does not specify the sources which were used in arriving at the conclusions, that report is not in accordance with the standard appraisal practice.

In what way is such --

THE COURT: Wait a minute. I don't hear any answer, if that is a question.

MR. GARTNER: That is not a question; it is -- a preliminary, like many of the ones Mr. Stream --

THE COURT: Don't cite him.

MR. GARTNER: I admit it's a bad example.

THE COURT: I doin't. I think there have been a few bad examples on both sides here, counselor, actually.

Now, ask your question.

Q A report which does not cite the sources, in what way is such a report unreliable?

MR. STREAM: Your Honor, this is not proper

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redirect. It has already been asked and I therefore object.

MR. GARTNER: The question was not asked.

MR. STREAM: I object.

THE COURT: All right. I am going to allow it. I won't get that technical but it is time that you came to some conclusion on your redirect. I will agree with that one.

MR. GARTNER: Right after this, your Honor.

A It fails to show the professionalism of an appraiser and of the report, of his end product.

THE COURT: Well, what good does that do, Mr. Witness? What good does that do to the person who sought the appraisal?

THE WITNESS: It does --

THE COURT: It reenforces it?

THE WITNESS: I think it goes to the credibility of the acceptance of the report.

THE COURT: Is that all it does? It may be correct without it, is that so?

THE WITNESS: Yes, sir. It may be correct without it and it may be wrong without it.

THE COURT: And it may be wrong with it, isn't that so?

THE WITNESS: Yes, sir.

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THE COURT: All right. That's enough.

Any other questions?

MR. GARTNER: No further questions.

THE COURT: Any recross?

MR. STREAM: No further questions, your Honor.

THE COURT: All right. You are excused.

(Witness excused)

THE COURT: Tomorrow, members of the jury, five minutes to 11:00.

Continue to heed my instructions. Thank you.

(Court adjourned to April 25, 1975.)

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past by plaintiff Ajax Hardware Manufacturing Corporation (hereinafter referred to as 'Ajax')?

"A Yes.

"QUESTION 3: During what period of time were you employed by Ajax?

"A From 1961 through March of 1968.

"QUESTION 4: What was your position with Ajax during that period of time?

"A At the beginning I was assistant to the president until sometime in 1964. Then I became executive vice president until leaving the company. Since leaving Ajax I have been president of Standun, Inc.

"QUESTION 5: What were your duties --"

THE COURT: What duties, for which corporation?

MR. GARTNER: Well, the answer describes it.

THE COURT: All right.

MR. GARTNER: "A As executive vice president I supervised operations and developed new lines of business.

"QUESTION 6: What were Ajax's business interests during the period of time that you were employed by Ajax?

"A Principally the manufacture of hardware. In approximately 1966 they also became engaged in the fuse business and were actively seeking a production contract for the manufacturing of fuses

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"QUESTION 7: In connection with your duties for Ajax, did there come a time when you met Mr. Jesse Thaler of Industrial Plants Corporation, hereinafter referred to as Industrial?

"A Yes.

"QUESTION 8: When did this meeting take place?

"A The first meeting was August 12, 1966.

"QUESTION 9: Where did the meeting take place?

"A In the Time & Micro New York office.

"QUESTION 10: How did this meeting come about?

"A One of Ajax's officers arranged the meeting. The purpose was to get an appraisal on machinery and equipment in the Time & Micro plant.

"QUESTION 11: At this meeting did you have a conversation with Mr. Thaler?

"A Yes, I did.

"QUESTION 12: What did you say to Mr. Thaler and what did Mr. Thaler say?

"A I told him Time & Micro may become a vendor or a joint venture partner to Ajax in the fuse manufacturing program and that Time & Micro had to repay a loan obligation and possibly Ajax would assist them and that we must be certain of the real value of the machinery and equipment before we became involved financially in assisting them with

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their loan repayment problems and that the approximate amount of the loan was in excess of $250,000. I told him that we at Ajax had no knowledge of the value of this type of machinery and would depend solely on the values established by his appraisals in making our decision. He said he was familiar with making this type of appraisal and would accept the assignment.

"QUESTION 13: What if anything was said at that meeting about Industrial or Mr. Thaler's qualifications to make an appraisal of the machinery owned by Time & Micro Corporation located at Strasburg, Pennsylvania?

"A I asked him if he was qualified in this specialized field of machinery. He said he was an expert in this field and that he had appraised similar machinery for Fairchild Camera and other similar companies."

Question 14 was withdrawn.

"QUESTION 15: What, if anything, did you tell Mr. Thaler about the nature of the appraisal you wanted him to make?

"A I told Thaler I wanted an itemized appraisal of each piece of equipment and not an appraisal of the entire unit value as a watch manufacturing plant. I told Thaler that we wanted to know if on a forced sale there would be enough value to assure Ajax's protection on the advance or

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guarantee of approximately $250,000 on the mortgage debt of this machinery.

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"QUESTION 16. What, if any, instructions did you give Mr. Thaler at that meeting?

"A I instructed Thaler to appraise the machinery at Time and Micro plant individually by items and determine what it"-- and then there is a correction with Mr. Klein made after the deposition had been transcribed so that the word "it" is changed to "each."

"Determine what each would be worth on a forced sale."

MR. STREAM: Would counsel please read the comment made by the witness as to the reason he changed that word, if there was a comment.

MR. GARTNER: Your Honor, I don't think it is necessary to read the comment. There is no direction by the Court that we do that.

MR. STREAM: If it is other than the typographical.

THE COURT: What is your request, counselor?

MR. STREAM: My request --

MR. GARTNER: I have no objection to reading it.

THE COURT: All right, read it then.

MR. GARTNER: The comment was that there was a possible mis-transcription by the reporter.

So that the full answer, as corrected -- and the correction sheet is dated the following day, February 7th,

jwcg 2 "Klein"

after Mr. Klein had read this --

THE COURT: All right.

MR. GARTNER: -- the full answer reads: "I instructe Thaler to appraise the machinery at Time and Micro plant individually by items and determine what each would be worth on a forced sale.

"QUESTION 17. What, if any, discussions took place at that meeting with respect to when the appraisal was to be made and reported?

"A To the best of my recollection I told Thaler we wanted the appraisal done right away.

"He said he had scheduling difficulties.

"I asked him to see if he could rearrange his schedule.

"He said that his inspection of this equipment would take one day.

"QUESTION 18. What discussions, if any, took place at this meeting with respect to Industrial's fee?

"A To the best of my recollection Thaler first indicated his fee would be based on the basis of one percent of the first $500,000 of appraised value and one-half percent of any amount in excess of $500,000 appraised value.

"I questioned Thaler as to this amount seeming to be excessive.

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"Thaler said, 'We are paying for one day's work and 42 years of experience.'

"After some discussion he finally agreed to a lesser amount.

"QUESTION 19. Withdrawn.

"QUESTION 20, What, if any, information did you make available at this meeting about the machinery at the Time & Micro plant?

"A I gave Thaler a copy of the Hirschmann Report and I told him we did not know anything about the values of this type of equipment.

"QUESTION 21. Attachments 1 and 1-A are copies of the so-called Hirschmann Report and covering letter and attachments marked herein in the deposition of Martin H. Kaefer as Plaintiff's Exhibit 26 and Defendant's Exhibit B, respectively."

Now, I would like at this point, your Honor, to introduce those attachments?

THE COURT: There is another question at that point, isn't there?

MR. GARTNER: I will go on.

THE COURT: All right, we will pause for this portion of the exhibits.

MR. STREAM: May I suggest that he finish the

question and the answer and then introduce it and I will consent to the introduction.

THE COURT: All right, go ahead then.

MR. GARTNER: (Reading) "How, if at all, did these documents figure in your meeting with Mr. Thaler?

"A I told Thaler to use this as an inventory guide, but to make his own independent appraisal as to the relative values of each item of machinery and equipment."

And again at that point there is a correction which was made the next day when the transcript was available.

THE COURT: Yes.

MR. GARTNER: And that is to change the word "relative" to "present."

The comment is "clarification for greater accuracy."

So that the final answer reads: "I told Thaler to use thisas an inventory guide, but to make his own independent appraisal as to the present value of each item of machinery and equipment."

Now I will introduce, if I may, Exhibits 1 and 1A.

THE COURT: Are those in evidence?

MR. GARTNER: I am offering them now, your Honor, because they were identified.

THE COURT: Then the answer is they are not in evidence yet?

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THE COURT: Are they through now? Will you state, Mr. Gartner, what you believe the exhibits were which the jury have just about read now? Just the number, please.

MR. GARTNER: 8A and 8.

THE COURT: All right. That's all I wanted.

If there are any more of these, Mr. Gartner, I think it would save time if they were read to the jury.

MR. GARTNER: Yes, your Honor, I will do that.

THE COURT: Especially if they are short ones.

You may continue now.

MR. GARTNER: Thank you, your Honor.

"QUESTION 22. What was the Hirschmann Report?

"A It was a list of the equipment in the Time & Micro plant with a value on each item and it was done in 1964.

"QUESTION 23. And how, if at all, did plaintiffs receive a copy of the Hirschmann Report?

"A Sometime in July of 1966 Mr. Shriro, president of Time & Micro,mailed a copy of this report. It was sent at my request."

MR. GARTNER: Question 24 was omitted.

"QUESTION 25. What, if anything, did you say when you gave the Hirschmann Report to Mr. Thaler?

"A I told Thaler to use this as an inventory guide

but to make his own independent appraisal as to the relative values of each item of machinery and equipment."

That answer was corrected the following day to read, "I told Thaler to use it only as an inventory guide but to make his own independent appraisal as to the present values of each item of machinery and equipment," and the reason is, "clarification for greater accuracy."

MR. STREAM: May I see that, your Honor, for a second, the comment? For just a second, please?

(Pause.)

MR. STREAM: Thank you very much.

THE COURT: Very well.

Proceed.

MR. GARTNER: "QUESTION 26. What arrangements for Mr. Thaler's survey of the Time & Micro plant were made at the meeting referred to in Question 7?

"A Because the plant was difficult to locate and reach, I arranged for Harry Haakenson to take Thaler there.

"QUESTION 27. Who is Harry Haakenson?

"A He was an Ajax employee.

"QUESTION 28. What if anything did you tell Mr. Thaler at any meeting you had with him or at any other time about Mr. Haakenson?

"A I told Thaler Haakenson was familiar with this

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particular plant and he could be helpful in identifying each item in the inventory to be appraised. I told him not to rely on any other information which he might get from Haakenson as a basis for this appraisal.

"QUESTION 29. Did you have any conversation with Mr. Thaler after your first meeting and prior to August 15, 1966? If so, please relate each such conversation.

"A I am not sure but we may have had a further conversation regarding the date of his appraisal inspection.

"QUESTION 30. After your first meeting, when did you next speak with Mr. Thaler?

"A I am not sure that I spoke with him the day after our first meeting but I am sure I spoke to him the day he was at the Time & Micro plant and probably the next day also. "

THE COURT: Weren't some of these questions read yesterday?

MR. STREAM: Yes. Question 30 and 31 were read yesterday.

THE COURT: Then go ahead.

MR. GARTNER: For continuity, your Honor.

THE COURT: I hope there is not too much of this repetition.

MR. GARTNER: Yesterday it was objected that I

didn't read enough. I will go on.

THE COURT: That means no difference. Please go on without further comment.

Disregard the comment.

MR. GARTNER: "A There were two conversations. On the night he was at the Time and Micro plant he told me he could not give me any figures and that he wanted to return to his office before giving a final figure. I talked to him again probably on the next day and he told me that the fair market value of the machinery and equipment was approximately $900,000 and the forced liquidation value was about $500,000. I told Thaler we are waiting to get your appraisal in writing before consummating the agreement with Time and Micro. I asked him to send a telegram confirming his verbal information.

"QUESTION 32. Did you subsequently receive a telegram giving him Industrial's appraisal?

"A Yes.

"QUESTION 33. Is attachment 2 hereto a true copy of that telegram?

"A Yes, as far as I know."

MR. GARTNER: That is in evidence as Plaintiff's Exhibit 3, the telegram, and I believe I read that and I will read it again.

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THE COURT: Don't do it again, then.

MR. GARTNER: "QUESTION 34. If the answers to Questions 32and 33 are 'Yes,' did you make that telegram available to anyone other than yourself among the officers of plaintiff? If so, to whom?

"A Yes. I made a copy for Norman Louis and I assume any other executive that required copies.

"QUESTION 35A. Can you identify the document annexed hereto as attachment 2A?

"A Yes. That is the agreement signed after we got the telegram."

MR. GARTNER: The agreement marked as 2A is this document.

THE COURT: Is it in evidence?

MR. GARTNER: No. I will ask it be marked for identification or, if your Honor please --

THE COURT: Well, I think that is the proper way to do it. Do you have some other method?

MR. GARTNER: The only suggestion I have is that since 2A was a copy of this original which we have here, I would like to have the original marked in evidence. It is much more legible and, for the purposes --

THE COURT: There is no objection from counsel.

MR. GARTNER: Here are the two documents. They are

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THE COURT: Never mind. That is a matter of listening to the record here.

Go ahead.

(Mr. Gartner continued reading to the jury from Plaintiff's Exhibit 9.)

THE COURT: Well, that is enough, isn't it?

MR. GARTNER: No, your Honor, there is just one more paragraph.

THE COURT: Well, read it, if you want it read.

MR. GARTNER: I will, your Honor, in a moment.

THE COURT: Proceed.

(Mr. Gartner continued reading to the jury fromPlaintiff's Exhibit 9.)

MR. GARTNER: That is all I think is necessary to read at this time. It may turn out to be necessary to read more later on but your Honor is urging me to save time and I will try.

THE COURT: Well, go ahead. There are only about twenty pages more, I guess.

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MR. GARTNER: "QUESTION 35-B: If the answers to questions 32 and 33 are yes, what, if any, relationship does the document annexed hereto as attachment 2-A have to attachment 2?"

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MR. GARTNER: 2-A, of course, is the loan security agreement which I just read and attachment 2 was the telegram which is, in this trial, Plaintiff's Exhibit 3.

THE COURT: What is the attachment 2-A?

MR. GARTNER: Exhibit 9.

The question is, what is the relationship between these two documents, your Honor.

THE COURT: All right.

MR. GARTNER: "A The agrement was executed and delivered only after we received the telegram from Industrial Plants. Ajax relied exclusively on the Industrial Plants' appraisal in making this agreement and would not have entered into this agreement if the appraisal had not shown the value that it did."

MR. GARTNER: There is a slight correction there --

MR. STREAM: Your Honor, again, not slight, not big, just a correction.

THE COURT: Just say a correction. Do not attempt --

MR. GARTNER: There is a correction. I apologize your Honor.

There is a correction there.

THE COURT: Do not do it again.

MR. GARTNER: The word "value" is changed to "values,

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with an "S" on the end of it.

MR. STREAM: That is anything but a slight correction.

MR. GARTNER: If your Honor will direct counsel not to make comments.

THE COURT: Yes. Also, I direct you, you see, you engendered the last comment.

MR. GARTNER: I withdraw the comment and that does not give him permission --

THE COURT: Things once said sometimes they cannot be retrieved. If you will be more careful perhaps you will not have so much trouble from your adversary. Now read your answer.

MR. GARTNER: So that the answer as corrected reads, "Ajax relied exclusively on the Industrial Plants' appraisal in making this agreement and would not have entered into this agreement if the appraisal had not shown the values that it did.

"QUESTION 35-C: What relationship, if any, did attachments 1 and 1-A --" those are the documents marked here as 8 and 8B --

THE COURT: Read the question again. I think you stopped partway through, didn't you?

MR. GARTNER: Yes.

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The question is, "What relationship, if any, did attachments 1 and 1-A have to attachment 2-A?"

THE COURT: 1 is now 8 and 1-A is 8-A.

MR. GARTNER: Yes, and 2-A is 9.

So the question is, "What is the relationship between these documents."

THE COURT: And the answer is --

MR. GARTNER: And the answer is, "None."

Question 36 was omitted and withdrawn.

THE COURT: Pass over such areas. You do not need to tell us if it is omitted. It is not in then.

MR. GARTNER: Your Honor, it is very difficult. If I pass over it I am afraid that Mr. Stream is going to say I am omitting things.

THE COURT: I do not think he will. He says he will not, in substance.

MR. GARTNER: Now he says he will not.

THE COURT: Well, save time by omitting it. Do not look a gift horse in the mouth, counselor.

MR. GARTNER: I do not know in which direction to look, your Honor.

"QUESTION 39: Is attachment 3 a true copy of a letter dated August 19, 1966, which you received from Industrial?"

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MR. GARTNER: That, your Honor, is already in evidence as Plaintiff's Exhibit 4.

THE COURT: And the answer?

MR. GARTNER: The answer is, "Yes."

I think I have read that to the jury so I will not read it again at this time.

THE COURT: Well, I am assuming that you are marking those you read this time so that the reporter will have all of them read. Do not fail to do that.

MR. GARTNER: I am referring to the document, not the question, your Honor. The document.

THE COURT: Proceed, if you can.

MR. GARTNER: "QUESTION 39: Were there any communications between Ajax and Industrial subsequent to the receipt of the letter of August 9, 1969?

"A Yes.

"QUESTION 40: Please identify attachment 5, if you can.

"A This is a copy of a letter Norman Louis sent to Industrial Plants Corporation."

MR. GARTNER: I would offer this as Plaintiff's Exhibit 10.

xx (Plaintiff's Exhibit 10 marked for identification.)

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MR. STREAM: I suggest that we use the original counterpart of the exhibit.

MR. GARTNER: May I see it?

THE COURT: I do not know what that means, counselor.

MR. GARTNER: We may stipulate.

THE COURT: All right. Take the original, then, Mr. Gartner, if you wish.

MR. STREAM: Your Honor, I suggest that we use the original letter which is the ribbon copy of the letter sent. The only difference between that exhibit --

MR. GARTNER: If your Honor pleases, I think your Honor has admonished Mr. Stream not to comment. I have suggested that --

THE COURT: Well, he may have to explain something. It is not comment if it is an explanation.

MR. GARTNER: If it is the same, I will stipulate to it.

THE COURT: Look at it and see if you can.

MR. GARTNER: He will not show it to me.

THE COURT: All right. Look at it and see if you cannot promote a little harmony here, both of you.

MR. GARTNER: No objection, your Honor.

THE COURT: So be it.

xx

THE COURT: This is attachment 5? Was it attachment 5?

MR. GARTNER: Yes, your Honor.

THE COURT: All right. So be it. It is now Exhibit 10 in this trial.

MR. GARTNER: Yes.

MR. CLERK: It is not in evidence, yet, your Honor.

MR. STREAM: I consent to it being received.

THE COURT: Submit it to the clerk and he will mark it in evidence.

MR. GARTNER: Your Honor, at this time I would also like to offer --

THE COURT: One thing at a time.

MR. GARTNER: This has to do with the letter.

THE COURT: You are offering the letter, are you, counselor?

MR. GARTNER: I would like to have marked for identification the copy of the letter which Mr. Klein identified in his deposition because -- well, I will explain, your Honor.

May I have this marked as 10-A?

MR. STREAM: I consent that the original counterpart and the copy be marked as Exhibits 10 and 10-A received in evidence.

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THE COURT: Very well, counselor. Take that, if you will.

xx (Plaintiff's Exhibits 10 and 10-B received in evidence.)

MR. STREAM: I ask that the exhibit be read to the jury. It is a one-page letter, so the jury has it in context.

THE COURT: Which one are you talking about?

MR. STREAM: The letter just received in evidence.

MR. GARTNER: Thank you, Mr. Stream. I intended to read it to the jury. I am delighted that you reminded me.

THE COURT: You are asked to read it now.

MR. GARTNER: I am delighted that you reminded me.

THE COURT: Do not fight about it.

MR. GARTNER: There are so many interruptions from both sides it is hard to keep track of what is going on.

THE COURT: Oh, I think you can do.

MR. GARTNER: I am doing my very best.

THE COURT: I do not think there should be any trouble and let it be read now.

MR. GARTNER: I am going to read it right now.

THE COURT: There is no need of bickering about that, counselor.

MR. STREAM: You know, your Honor, I am going to interrupt to say that I find it very difficult to see this man,

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this counselor, acting before this jury like a hurt child when your Honor admonishes him. I think he ought to be professional about his approach to this jury.

THE COURT: Well, I suggest that I have said that both counsel should refrain from this bickering, which is transpiring and I hope it will end now.

Proceed and read the exhibit and state what exhibit it is in this trial.

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MR. GARTNER: Exhibit 10A is headed, "Airmail, August 23, 1966."

MR. STREAM: Let me have 10, if you are reading from 10-A, please, so I can compare them.

MR. GARTNER: Please stop interrupting. I am reading from both of them at the same time.

THE COURT: How can you read from both of them at the same time? Read them separately. It is my direction. Now proceed in the way I have stated.

MR. STREAM: I would like to have the one he is not reading.

THE COURT: He wants to take the one that you are not reading.

MR. GARTNER: Your Honor, he has a copy of these documents. Why is he interrupting me?

THE COURT: In any event, I think he is entitled to see the other one, the one that is marked.

MR. STREAM: The one you are not reading; let me have that.

THE COURT: There should not be any difficulty about that little bit of courtesy.

MR. STREAM: Thank you.

MR. GARTNER: Exhibit 10-A is headed, "Airmail, August 23, 1966," addressed to Mr. Jesse Thaler, President,

Industrial Plants Corporation, 211 East 43rd Street, New York, New York 10017.

"We are in receipt, Mr. Thaler, of your appraisal of the Time & Micro Instruments Corporation equipment. It was an imposition to ask you to appraise this plant on such short notice, but since Time & Micro were so anxious to come to some preliminary understanding at an early date and since we had to have some basis upon which to go, we had to ask for your prompt cooperation for which we are thankful.

"You speak of the value of the equipment and its fair market value. In our usual appraisals, we have always received the definition of what is meant by "fair market value." Therefore, we would like a definition from you as to your interpretation of fair market value.

"As Mr. Klein discussed with you, we would also like for our information" --

MR. STREAM: "for our own information."

MR. GARTNER: It is entirely improper for counsel to interrupt me in the middle of reading.

THE COURT: Not if he corrects your letter.

MR. GARTNER: He is not correcting my letter at all.

THE COURT: You better cool down, counsel. I have had enough of it. Start reading it over again.

MR. GARTNER: There was nothing wrong with my

reading and the record will show it.

THE COURT: Very well, proceed.

MR. GARTNER: "Airmail, August 23, 1966" --

MR. STREAM: I don't think his Honor means for you to start at the top.

MR. GARTNER: There he goes again. Your Honor asked me to be courteous to this man.

THE COURT: Read the part to which he referred counsel. You do not need to go to extremes.

MR. GARTNER: Your Honor directed me to read the letter over again.

THE COURT: All right, read it over again, if you want to.

MR. GARTNER: "Mr. Jesse Thaler, President" -- I do not want to read it over again. If your Honor wants me to read it, if your Honor will tell me what to do I will be glad to do it.

THE COURT: Read the part to which he adverted, if you can.

MR. GARTNER: "As Mr. Klein discussed with you, we would also like for our own information, what in your opinion the equipment would bring under a forced sale. Since I understand you are also auctioneers and liquidators, we would like to know what your organization would be willing

5 at the same time.

THE COURT: Wai[illegible]nute. What are we doing now?

MR. GARTNER: Exhibit 5 is a copy of that. So it will take half the time.

THE COURT: Is that conceded, Mr. Stream?

MR. STREAM: Yes.

THE COURT: All right, start that in the rear row.

MR. GARTNER: This should take half the time.

THE COURT: I hope so.

(Pause)

THE COURT: After this examination we are going to have a recess.

MR. GARTNER: Thank you, your Honor.

(Pause)

THE COURT: Let's have a short recess. It is almost half past 12, I believe.

(Recess)

THE COURT: You may go on, Mr. Gartner.

MR. GARTNER: Thank you, your Honor.

"QUESTION 42: Did you have a conversation with Mr. Thaler within a few days after August 23, 1966? If so, what was that conversation?

"A. Yes, to discuss a guaranteed buy-out. He confirmed again the forced liquidation value was $500,000 and

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that it would decrease with the passage of time and that he wanted to talk to Mr. Kriser about it.

"QUESTION 43: Did you have any conversations with representatives of Industrial subsequent to the auction of the machinery held during October 1967? If so, with whom and what was said?

"A I had several conversations and I met with Thaler in New York. I do not recall the exact details of the telephone conversation. To the best of my recollection, the conversations were in regard to Industrial Plants' obligations to help Ajax dispose of the machinery and equipment not sold during the auction.

"During the meeting with Thaler in New York he said he had made a big mistake on the appraisal. He said he was sorry and felt badly that the mistake had happened. He said he did not have sufficient time to check the values because we had asked for the report two or three days after the inspection.

"QUESTION 44: Is attachment 6 a true copy of a letter sent by you to Mr. Robert Botwinik dated January 26, 1968?

"A Yes."

THE COURT: Who is this man Botwinik?

MR. GARTNER: He was the vice president of

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AFTERNOON SESSION - 2 P. M.

(In the robing room.)

THE COURT: What is it? What can I do for you?

MR. GARTNER: Thank you, your Honor. I would like to try to avoid any bickering before the jury and we are getting to the point where Mr. Stream is about to read question number 3, cross-question, which we discussed here in this room yesterday and I would read them the transcript where I said, "The objection we made to that question" --

MR. STREAM: Can I cut across this, please? I will be glad to use all of your original letters without the underscoring. It doesn't mean a darned thing. No problems; if that's what you want. I don't know what the big deal is.

MR. GARTNER: Well, for example, with respect to these two exhibits --

THE COURT: Isn't that sufficient for your purposes, what he said?

MR. GARTNER: Not really, your Honor.

THE COURT: Well, not perfectly but, is it substantially so.

MR. GARTNER: It's not a question of trying to be a perfectionist. There are very serious matters involved here.

This exhibit, 10A, which we introduced and which was

marked as an exhibit during a deposition, did not contain these underlinings?

THE COURT: Well, didn't I decide something about this this morning, that Mr. Stream could offer it when it came to the defense? That's what I decided.

MR. GARTNER: But, your Honor, it's more serious than that. It's the question of the fact that alternations were made in the exhibits after they were marked.

THE COURT: I don't know anything about that. We will have to have a hearing if there is any such claim. I won't get into it now.

I don't know why we have to have this at mid-day?

MR. GARTNER: As long as we have an understanding that the originals may be offered, unless they have underlinings which were not originally on there, then I am perfectly content. All I wanted to do --

MR. STREAM: You see, your Honor, all counsel is doing is complaining about underlining. Nobody changed words or retyped or wrote sentences. I am not sure whether the underlining was on before or not. I wasn't present at the deposition.

In any case, whether they are underlined or not underlined, I will underline by closing to the jury, underline verbally, what I have underlined and that's another

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story. But, so far as this offer is concerned, I will be very happy to use any copies that counsel has which are not underlined because it doesn't make a hill of beans.

THE COURT: Can we do that, then?

MR. GARTNER: As long as we get in the original document.

THE COURT: Without the underlinings.

MR. GARTNER: Yes.

MR. STREAM: Can we start the case now, then?

THE COURT: Well, wait a minute.

That is another thing, as long as you are here.

I think there is some reluctance on the part of Mr. Stream -- I'll put it that way politely -- to give Mr. Gartner the requested charge; is that it?

MR. STREAM: Yes.

THE COURT: I am going to rule that you have to do it. You see, it's fair that it must be done so that he has it.

Don't do it unless he gives you his.

MR. GARTNER: We have always given and we will continue to give copies of everything we give to the Court.

THE COURT: All right. Eventually, when the case is closed, then I must make my determinations and I must ask each counsel as to his exceptions so, please.

MR. GARTNER: We will immediately serve any additional requests on counsel.

MR. STREAM: I haven't any of their requests but I will give it to him.

THE COURT: All right. Thank you.

(In the courtroom, jury present.)

1a-2 THE COURT: You may continue. What page, please?

MR. STREAM: This will be cross-question 3.

"CROSS-QUESTION 3. Annexed to these questions as attachment C is a copy of a letter previously marked as Plaintiff's Exhibit 16 for identification. Did you or Ajax receive the original of this letter?

"A The answer is yes."

MR. STREAM: If counsel will hand me the original counterpart, has counsel got the original counterpart?

MR. GARTNER: I have a copy of the original. Sorry. Which one do you want.

MR. STREAM: The one dated October 7.

MR. GARTNER: Yes. There it is.

MR. STREAM: I offer in evidence as Defendant's Exhibit H the original counterpart of a letter dated October 7, 1966, from Thaler to Klein.

MR. GARTNER: No objection.

THE COURT: Mark it in evidence.

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(Defendant's Exhibit H received in evidence.)

MR. STREAM: May I read it, your Honor?

THE COURT: Yes.

(Mr. Stream reads from Defendant's Exhibit H to the jury.)

MR. STREAM: Your Honor, the letter then goes into the definition which has been read in the presence of the jury twice before and I will omit it at this time. It was a definition of market value and in place value.

(Mr. Stream continued to reading to the jury from Defendant's Exhibit H in evidence.)

MR. STREAM: This is Cross-Question 4 and these questions were put by our counsel for the defendant to Mr. Klein.

"CROSS-QUESTION 4. Annexed to this question as attachment D is a copy of a letter previously marked as Plaintiff's Exhibit 23 for identification. Did you or Ajax receive the original of that letter?

"A Yes."

MR. STREAM: I ask counsel, have you the original of a letter dated November 19, 1966? The witness said it was received by Ajax.

MR. GARTNER: No, I don't have the original. I have no objection to that one.

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MR. STREAM: I ask that this be marked Defendant's Exhibit I in evidence.

XXX

(Defendant's Exhibit I received in evidence.)

MR. STREAM: May I read it to the jury?

THE COURT: Yes.

(Mr. Stream read to the jury Defendant's Exhibit I in evidence.)

MR. STREAM: The invoice mentioned there was the exhibit marked in evidence as Defendant's Exhibit F.

"CROSS-QUESTION 5. Annexed to these questions as attachment E is a copy of a letter previously marked as Plaintiff's Exhibit 20 for identification. Did you or Ajax receive the original of that letter?

"A Yes."

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MR. STREAM: I offer in evidence a copy of that letter unless counsel has the original thereof.

MR. GARTNER: Could I see it, please?

(Pause)

MR. GARTNER: I do not have the original and I have no objection to this except for the underlining and the circling.

MR. STREAM: May I offer it in evidence, sir?

THE COURT: With the exception of the underlining?

MR. STREAM: There is a pencil around part of the letter.

MR. GARTNER: It does not matter, your Honor.

THE COURT: Mark it in evidence, then.

xx (Defendant's Exhibit J received in evidence.)

MR. STREAM: May I show this to the jury and read it quickly, your Honor?

THE COURT: Yes.

MR. STREAM: It has a line around part of it.

(Mr. Stream read to the jury from Defendant's Exhibit J.)

MR. STREAM: CROSS-QUESTION 7: Was payment of Industrial's fee for appraising the Time & Micro plant made by Ajax?

"A We did not pay for appraising the Time & Micro plant. We paid for appraising the individual items of

machinery and equipment.

"CROSS-QUESTION 8: Was payment of that fee made on or about November 30, 1966?

"A Yes.

"CROSS-QUESTION 9: Was it paid by Ajax's check No. 35908?

"A If the invoice is correct, I assume so.

"CROSS-QUESTION 10: Do you recognize attachment F as the invoice which was attached to the check in payment of that fee?

"A I don't remember if I saw it at that time.

"CROSS-QUESTION 11: If not, do you deny that it is the invoice which was attached to the check in payment of that fee?

"A I don't know.

"CROSS-QUESTION 12: Did you or Ajax receive the original of attachment G?

"A Yes."

MR. STREAM: Attachment G is a letter dated August 30 1966, written to Mr. Klein and he acknowledged that it was received.

Does counsel have the original that Mr. Klein said he got?

MR. GARTNER: I have a copy of the original which

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does not have any underlining on it and I offer that in place of the copy which Mr. Stream is offering with underlining.

MR. STREAM: Sir, may I first have an answer -- your Honor -- is the original which Mr. Klein said he has here? That is the first thing I want to find out.

MR. GARTNER: I answered and said I don't have it.

MR. STREAM: Then I will accept a copy if counsel cannot produce the original and I offer it in evidence as Defendant's Exhibit K.

xx (Defendant's Exhibit K received in evidence.)

MR. STREAM: May I read it to the jury, your Honor?

THE COURT: Yes.

(Mr. Stream read to the jury from Defendant's Exhibit K in evidence.)

MR. STREAM: "CROSS-QUESTION 14: Is it not a fact that you understood attachment G" -- namely, Defendant's Exhibit K in evidence -- "to be an offer by Industrial to agree to purchase the Time & Micro plant from Ajax for $350,000 at any time during a 100-day period?

"A No."

MR. GARTNER: Your Honor, there is a correction there which I think should be pointed out.

THE COURT: Where is that?

MR. GARTNER: On line 5, page --

THE COURT: Should it be 120?

MR. GARTNER: I am sorry. It should be 120 but it was not corrected.

I am sorry, your Honor.

MR. STREAM: "CROSS-QUESTION 15: If not, what did you understand it to be?

"A I understood it as an offer to guarantee the $350,000 would be realized on the sale of this machinery and equipment.

"CROSS-QUESTION 16: Did you ever communicate to anyone at Industrial in writing your desire to enter into the guarantee arrangement described in Defendant's Exhibit K?

"A No.

"CROSS-QUESTION 18: At or about the time you received the original of attachment G" -- namely, Defendant's Exhibit K in evidence -- "did you have a conversation with the president of Ajax wherein it was said in words or in substance that Industrial had offered to guarantee the sum of $350,000 for the Time & Micro plant?

"A No. I informed Mr. Louis of the contents of the letter.

"CROSS-QUESTION 19: Did you have a conversation with Ajax's president then wherein it was said in words or in substance that if Ajax made such an arrangement with

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Industrial it would guarantee Ajax a sales price for the Time & Micro plant of $350,000?

"A No. The letter referred to machinery and equipment and not the plant.

"CROSS-QUESTION 20: Did you have any such conversation as that described in Questions 18 and 19 with anybody else?

"A Yes. I spoke with Mr. Thaler and with Mr. Kriser.

"CROSS-QUESTION 21: With whom did each said conversation take place?

"A Thaler and Kriser.

"CROSS-QUESTION 22: What is the date or approximate date of each said conversation?

"A Sometime between August 23 and August 30.

"CROSS-QUESTION 23: What was said by each party to each of the said conversations?

"A As to Thaler, I have already testified. As to Kriser, he did not question the $500,000 amount. However, he pointed out that the fee would be based on the total commitment and pointed out to use only the amount we needed, approximately $350,000.

"CROSS-QUESTION 24: Did you ever receive any writing by Industrial or anyone acting for it which offered

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relationship between Ajax and Time & Micro?

"A No.

"CROSS-QUESTION 37: In August 1966, or at any other time in 1966 had Ajax negotiated to purchase any interest of or in Time & Micro?

"A No, but Ajax had an option to as part of a loan and security agreement.

"CROSS-QUESTION 45: In August 1966, or at any other time in 1966, did Ajax negotiate or bid or prepare to bid for a government contract which could be performed by use of Time & Micro machinery and equipment?

"A Yes, except that Ajax was not planning to use the Time & Micro equipment, but to use Time & Micro as a sub-contractor.

"CROSS-QUESTION 46: In connection with what kind of a government contract did Ajax so act?

"A A contract to manufacture fuses.

"CROSS-QUESTION 47: When did those acts take place?

"A In 1966, probably before July.

"CROSS-QUESTION 48: Who acted on behalf of Ajax?

"A A great many people worked on behalf of Ajax. I don't remember all of them.

"CROSS-QUESTION 49: Who acted for what other

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participants involved in connection therewith?

"A I don't understand the question.

"CROSS-QUESTION 50: Were there any writings, correspondence, memoranda or otherwise, reflecting those acts?

"A Yes.

"CROSS-QUESTION 51: What writings were there?

"A There were voluminous writings with the government, proposed sub-contracters, material suppliers, etc.

"CROSS-QUESTION 52: Where are those writings?

"A I assume they are in the files of the government and the companies involved.

"CROSS-QUESTION 53: Where were they last, to your knowledge?

"A In the same place, I assume, in the files.

"CROSS-QUESTION 54: In August 1966, or at any other time in 1966, did Ajax participate in an institutional loan to Time & Micro?

"A Yes.

"CROSS-QUESTION 55: Who acted for and on behalf of each corporate and banking participant?

"A For Ajax Norman Louis. For Time & Micro Jacob Shriro. For the bank James Ryan.

"CROSS-QUESTION 56: Who arranged for the loan?

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THE COURT: All right. We will have a short recess. And will you see if you can conclude that stipulation as to the specific exhibits.

MR. GARTNER: Thank you, your Honor.

(Recess.)

(In the robing room.)

Now, what seems to be the trouble?

MR. GARTNER: Mr. Stream won't stipulate so I will have to read from the deposition.

MR. STREAM: I think, your Honor, in a jury case-- I didn't mind his fragmenting client's deposition because he had two witnesses he wanted to get on and off and I obliged him -- but in this case, if he has a deposition he has got to read it and not say, "Mr. Stream stipulates."

THE COURT: So be it. I agree with you.

MR. GARTNER: Your Honor, we had a discussion about this before. I don't want to belabor the point, but Mr. Stream has stipulated on the record that any document marked in the pretrial order may be admitted in evidence.

THE COURT: When was that?

MR. GARTNER: That is on the record three or four days ago.

MR. STREAM: No, sir, I simply --

MR. GARTNER: I will show it to you.

MR. STREAM: It's not so. I agreed that all objection would be waived, including relevance and materiality, but the offer still has to be made in a court of law according to the rules of evidence so that the jury understands the context.

MR. GARTNER: This is particularly in respect to the payment documents. Mr. Stream stipulated they would be admitted in evidence.

MR. STREAM: No so. I do not regard myself as bound by any such stipulation.

MR. GARTNER: May I bring in a copy of the transcript, your Honor?

THE COURT: Yes. What page is it? I have a copy here, I think.

MR. GARTNER: This is April 17, page 13.

MR. STREAM: I don't know if I have a copy.

THE COURT: If you both get your copy and give me my copy and give me my copy perhaps we can get some place. What page?

MR. GARTNER: Page 13.

THE COURT: What line is it?

MR. GARTNER: Line 4: "There is no question of authenticity of any of the correspondence. The so-called loan agreements that counsel is talking about with the bank are conceded documents. They will be marked in evidence."

Then it goes on: "There is no dispute that the defendant conducted an auction and there is no dispute that the proceeds were insufficient to pay the amount of the money" --

THE COURT: Leave out that sentence. That sentence doesn't say anything at all about --

MR. GARTNER: He says there is no dispute.

MR. STREAM: That's right, but you make your case. I am not conceding anything to you.

MR. GARTNER: He said there is no dispute.

THE COURT: You better be more careful in your statements.

MR. STREAM: Your Honor, there is no dispute. In the record now we know the auction proceeds were a sum less than the amount of the loans.

THE COURT: That has nothing to do with the amount of the exhibits.

MR. STREAM: Nothing whatsoever. "There is no question of authenticity, but that doesn't waive the question of materiality."

MR. GARTNER: He is talking about correspondence. Then he goes on to another subject.

MR. STREAM: What is counsel seeking to demonstrate, your Honor?

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THE COURT: I don't know.

MR. STREAM: I haven't the foggiest notion of what he is talking about.

THE COURT: We will go on. We will have to have it out the long way.

MR. GARTNER: If your Honor please --

THE COURT: Well, I have to rule and we have to go on with this case.

MR. GARTNER: I know, but then why are you angry at me that we have to go on?

THE COURT: I am not angry at you at all.

MR. GARTNER: You always --

THE COURT: Wait a minute. I am not angry at you at all. I simply have to decide this thing.

MR. GARTNER: You are always shouting at me.

THE COURT: I am not shouting at you, counselor. I am determining something that apparently you two can't agree on.

Now, let's go ahead and stop the talking.

(In open court, jury present.)

THE COURT: Proceed in the manner I just decided.

MR. GARTNER: Since Mr. --

THE COURT: Don't preface it with any statement at all, counselor. Proceed as agreed upon, as I stated it was

to be done.

MR GARTNER: I would like to read from Mr. Thaler's deposition, your Honor.

THE COURT: This is another deposition of Mr. Thaler. State the time it was taken, and so forth.

MR. GARTNER: The deposition was --

THE COURT: I don't have Thaler's, do I?

MR. GARTNER: Your Honor, here is a copy, a signed copy. There are three volumes to it.

THE COURT: Only three? Okay.

MR. GARTNER: Only three. The two latter are small ones.

This is the deposition of Jesse Thaler taken on December 10, 1969, page 3, line 13:

"Q What is your" --

MR. STREAM: Excuse me, sir. I think the jury should be informed that this deposition was taken in the fashion that I propose to state; namely, direct questions by Mr. Gartner in behalf of the plaintiff and then cross-examination by counsel for the defendant.

THE COURT: Very well.

MR. STREAM: These are questions by Mr. Gartner.

MR. GARTNER: Does Mr. Stream have any other comments before I proceed, your Honor?

THE COURT: That question is unnecessary. Proceed without any questions or comments.

MR. GARTNER: Thank you, your Honor.

"Q What is your full name and resident address?

"A Jesse Thaler, 70 East 10th Avenue, New York, N. Y.

"Q What is your present occupation with Industrial Plants Corporation?

"A I am vice president."

2b-3 Page 4, line 8:

"Q There are just two vice presidents?

"A Yes."

Line 10:

"Q As between the two of you, what is the distribution of functions?

"A Mine is primarily for appraisal work. His is to sell at public auction as an auctioneer."

MR. STREAM: You see, your Honor what happens when counsel skips questions. There is no way that the jury can understand whose is "his" because counsel has chosen to skip.

MR. GARTNER: Your Honor has ruled there shall be no comments.

THE COURT: There may be an appropriate comment.

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industrial equipment field. I wrote it, specializing in the appraisal of such equipment for well over 25 years."

MR. STREAM: Your Honor, may I ask your permission to explain to the jury what he meant when he said, "I wrote it," by reading to the jury --

THE COURT: I can't do that. That is overruled.

MR. GARTNER: Thank you, your Honor.

✓"I hold a senior membership in the American Society of Appraisers. I attended City College and Cooper Union."

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MR. STREAM: I want you to read line 9.

MR. GARTNER: There is no dispute about who was present at the meeting. The whole testimony is that they were the only --

THE COURT: If there is no dispute --

"Q Who was present at that meeting?

"A Just Mr. Klein.

"Q And you?

"A Yes, that's right.

"Q Do you remember Mr. Klein's first name?

"A Howard.

"Q Who was Mr. Howard Klein?

"A Vice president of Ajax.

"Q What was your conversation with him to the best of your memory?

"A Primarily it was, one, would I be willing to make the appraisal; number 2, how soon could we get to it; number 3, what would be our charge.

"Q What was the company that he was asking you to appraise?

"A Precision Time Corporation.

"Q That was located in Strasburg?

"A That's right.

"Q What were your answers to his questions?

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"A I agreed to do the appraisal. I set a time for the appraisal to commence work, about a week from the day of my meeting with him and I arranged the fee."

MR. GARTNER: Now I propose to skip to page 40, line 2.

"Q Did you indicate to Mr. Klein how long the appraisal would take?

"A At the time I didn't know how long it would take because I had never seen the plant.

"Q So you made no statement to him?

"A No?

"Q Was it at that time that he requested that you make the appraisal earlier?

"A No. I think he called me the next day and said he would like me to do this sooner than what I had originally agreed to do.

"Q But was it at the same time when you were in Mr. Shriro's office that MR. Klein gave you the other appraisal?

"A Yes.

"Q But I thought you said that he volunteered to give you the other appraisal in order to help you because of the shortness of the time allotted?

"A Yes, a week was short.

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"Q Even a week was considered a short time in any case?

"A Yes.

"Q What was this other appraisal that appraisal that he gave you?

"A A complete schedule of all the machines in the plant with a description of each machine with a record of the original cost of these machines and the appraised value of those machines.

"Q Do you have that appraisal you were given?

"A Yes."

MR. GARTNER: Then I said, "Please produce it," and I would like to repeat the question now to MR. Stream.

THE COURT: Just repeat it.

MR. GARTNER: Exhibit 2 was produced at that point and marked for identification and I would like Mr. Stream to produce it now.

MR. STREAM: I hand it to counsel.

MR. GARTNER: Thank you.

I offer it in evidence as Plaintiff's Exhibit 12.

XXX

(Plaintiff's Exhibit 12 received in evidence.)

MR. STREAM: Consented that it be received in evidence.

MR. GARTNER: And then I asked, "Do you want to

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identify for the record, Mr.Berman " -- and Mr. Berman was Mr. Thaler's lawyer at that time in --

MR. STREAM: No. Mr. Berman was my office associate. That's who he was.

MR. GARTNER: He was Mr. Thaler's lawyer.

MR. STREAM: I was Mr. Thaler's lawyer, your Honor, as counsel knows. He was a lawyer working in my firm.

MR. GARTNER: Your Honor, Mr. Stream was not present at this deposition.

THE COURT: Thatdoesn't make any difference.

MR. STREAM: My firm.

THE COURT: Don't start in to testify. Don't either lawyer start to testify.

MR. GARTNER: Mr. Berman said, "My understanding of Exhibit 2 is that it is a copy of an appraisal which was given to MR. Thaler by Mr. Klein absent the red markings."

I would like to hand this to the jury so that they can see --

THE COURT: Is it in evidence?

MR. GARTNER: It is in evidence.

MR. STREAM: I consented that it be received.

MR. GARTNER: Your Honor admitted it two minutes ago.

The jury can see that it is the Hirschmann appraisal

with red markings added to it, the appraisal previously having been introduced as Exhibits 8 and 8A.

THE COURT: Yes. That is plenty of evidence about it, counselor. It's repetitious.

Haven't they seen a copy of this before?

MR. GARTNER: No, your Honor. That has a lot of--

THE COURT: All right. I just asked you that.

MR. GARTNER: This has a lot of additional red markings on it.

THE COURT: Don't get excited about it. Please just answer my questions.

MR. GARTNER: I am not getting excited about it. It seems to me I am maintaining the same level as your Honor.

THE COURT: You don't have to follow my level at all.

MR. GARTNER: I think your Honor sets a good example. I don't know why I shouldn't follow your example.

THE COURT: That's in the record, too.

MR. GARTNER: Of course, your Honor.

THE COURT: There is nothing like clarity.

MR. GARTNER: Clarity is conveyed in many ways, your Honor -- tone, inuendo --

THE COURT: The tone of my voice means nothing, counselor.

MR. STREAM: I think that these comments are a little bit out of line on counsel's part.

THE COURT: Yes. It shouldn't be discussed, counsel.

MR. STREAM: Let's go on with the trial.

THE COURT: Where are we now? What's next? Has the jury seen this paper you have produced?

MR. GARTNER: Yes, your Honor.

Now, on page 43, line 3:

"Q It is your testimony that you were given this by Mr. Klein at the meeting in Mr. Shrib's office that you have testified about?

"A Yes, to the best of my recollection."

Now to page 45, line 10, your Honor.

"Q Did he ask you give an appraisal as of the date of the appraisal that you would make, to give your best judgement as to what this equipment was worth?

"A Yes.

"Q Regardless of what the Hirschmann appraisal said the equipment was worth?

"A Yes.

"Q In other words, he wanted to hire your expert knowledge and experience as an appraiser and he wanted you to give him your best and most careful judgment as to what this equipment listed in the Hirschmann appraisal was worth

as of the date that you would make your appraisal?

"A Yes.

"Q Was one of the reasons for which he gave you the Hirschmann appraisal simply so that you could have a list of the equipment and you would know what he wanted you to appraise?

"A Yes, to help me make an appraisal earlier, earlier than I could have if I didn't have the list.

"Q What type of equipment was listed on the Hirschmann appraisal?

"A Precision watchmaking machinery, mostly, and other standard machine tools.

"Q But it was mostly precision watchmaking machinery?

"A Yes."

MR. GARTNER: Now, I'll go to page 50, line 23.

MR. STREAM: Hold it, please.

MR. GARTNER: Yes, sir.

(Pause.)

"Q Mr. Thaler, going back to your" --

MR. STREAM: Your Honor, may I approach the bench, please?

THE COURT: No.

MR. STREAM: With counsel. I want to see the Court

in chambers.

THE COURT: Well, I want to take it in chambers, too.

3a-3

(In the robing room.)

MR. STREAM: I cannot tolerate this face making by counsel to the jury, this grand-standing. It is unprofessional, it is degrading, demeaning and it is also prejudicial. I have never seen --

THE COURT: Well now, counsel --

MR. STREAM: Let me finish what I have to say. I am mad now.

THE COURT: Wait a minute.

MR. STREAM: I have never in my life seen counsel parade before the jury with the grimaces and facial expressions that this highly skilled, professional attorney is doing.

MR. GARTNER: Well, I --

THE COURT: I have noticed something of the same character and I ask you to desist. I direct you to desist.

MR. GARTNER: I don't understand what counsel or the court is talking about.

THE COURT: Maybe you don't but I do and you appear to be soliciting the approval of the jury by your facial expressions.

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MR. STREAM: And his comments, your Honor. I think we ought to put a stop to the comments in front of the jury.

MR. GARTNER: What comments?

THE COURT: Oh, they are profuse.

MR. STREAM: His comments about the behavior of the Court, his comments over objections is nothing but an effort to stampede the jury to sympathize with him in this case.

MR. GARTNER: Now, would Mr. Stream please lower his voice because the jury can hear what is going on in this room.

THE COURT: Go ahead.

MR. GARTNER: In the second place, I take great exception to what Mr. Stream is saying. The last comment that I made, just before Mr. Stream interrupted me --

THE COURT: It's not merely comments. It is your grimaces and facial expressions.

MR. GARTNER: I am not making any grimaces, your Honor.

THE COURT: Well, your facial expressions, I think, are improper when you look toward the jury.

MR. GARTNER: I don't understand what your Honor is talking about.

THE COURT: Well, I am afraid you can't understand

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it. I don't know. I have noticed it and I am not the only one who has.

MR. GARTNER: I wish you would please try to describe what you are talking about.

THE COURT: I won't give you a bill of particulars.

MR. GARTNER: I want to try to control myself. I don't understand what your Honor is talking about and I do not make grimaces. What lead Mr. Stream to rise to his feet was when he asked me to wait, I turned to him and I said, "Yes, sir," and that's all I said and I made no --

THE COURT: Both of you ought to calm down.

MR. GARTNER: And I made no grimaces of any kind.

THE COURT: Wait a minute. I want to say something, if you will allow me to speak. I think both of you should calm down. I think there should be a greater attempt to cooperate, to try this case and there is difficulty in one of the difficulties which I have observed, frankly, is when you express some impression to the jury.

Now, you may not know what I mean but I think it is clear to me and I think you -- I ask you --

MR. GARTNER: If your Honor please --

THE COURT: Wait a minute. I ask you to attempt to avoid it in the future.

MR. GARTNER: If your Honor please, may I ask you

most respectfully that if you notice anything of this kind again, will you please call my attention to it because you have not said a word about it up until this moment.

THE COURT: Well, I don't like to interrupt for that kind of thing.

MR. GARTNER: Well, please do.

THE COURT: Maybe I will. I don't like to, though.

(In the courtroom.)

MR. GARTNER: Page 50, line 23:

Q Mr. Thaler, going back to your conversations with Mr. Klein in Mr. Shriro's office, you said that he told you that he wanted this appraisal in connection with some financing which would involve the machinery as collateral?

"A Yes."

MR. GARTNER: Page 52, line 14:

"Q When he gave you this exhibit" -- in this trial that is Plaintiff's Exhibit 12 -- "did he give it to you in this form, exactly the way it is now?

"A May I see it?

"Q Of course (handing to the witness.)

"A I had my girl put this cover on.

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THE COURT: That is the title of it; that is not the marking of the Court by the clerk.

Well, proceed in whatever you want to do here; let's go on with this multitudinous deposition.

MR. GARTNER: On page 81, line 13:

"Q Now that you have fixed the date of August 15 as the date on which you made the inspection, do you have any better recollection of when it was in relation to that date that you talked with Mr. Klein about making the inspection on August 15?

"A I would be able to tell you accurately if I referred to my day book.

"Q You have no other recollection?

"A Several days before.

"Q Several days before?

"A Yes.

"Q In those several days, Mr. Thaler, what did you do with respect to this appraisal?

"A Nothing."

MR. GARTNER: Now I will go to page 36, line 21.

"Q What materials did you have with you which you intended to use in making the appraisal? What materials did you have?

"A Just a pad and a pencil to make a record of each

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machine that I saw and at the same time utilize this list.

"Q Which list?

"A The inventory list on which I made notes.

"Q Which inventory list?

"A The Hirschmann inventory.

"Q The Hirschmann report?

"A Yes.

"Q That is, Plaintiff's Exhibit 2 for identification?

"A Right."

MR. GARTNER: Now I will skip to line 18 on page 87.

"Q When you arrived at the plant, Mr. Thaler, what happened?

"A There was a representative there -- I believe he was Mr. Shriro's representative -- who was at the plant in a custodian's capacity.

"Q Do you remember his name?

"A No. And then we began going from one machine to another evaluating it.

"Q Who began?

"A I did.

"Q You alone?

"A With Mr. Haakenson --"

MR. STREAM: May I have a moment, please, your Honor

THE COURT: Page 88.

MR. GARTNER: It is continuous reading.

MR. STREAM: May I have a minute, please?

Will counsel stipulate that the custodian was not Mr. Haakenson? Will he so stipulate?

MR. GARTNER: Yes.

MR. STREAM: Thank you.

MR. GARTNER: That is my understanding.

MR. STREAM: He was not the custodian.

MR. GARTNER: That is right. That is my understanding.

MR. STREAM: I have no further comments right now.

MR. GARTNER: Thank you, Mr. Stream.

"Q What procedure did you follow?

"A I viewed the machine to determine the condition, which was the most important thing, referred to the original cost of this machine, in addition to its approximate age which would also be a determining factor in the value and established my values as against the values that were on this Hirschmann appraisal.

"Q How did you establish your values?

"A Well, there were a number of items which we sell which Industrial Plants Corporation sells at auction sales very frequently, standard equipment.

"Q Yes?

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"A So that I was able to make a determination without any reference to the appraisal.

"Q Do you mean to the Hirschmann appraisal?

"A The Hirschmann appraisal.

"Q Yes?

"A As to others I made reference to it to determine its original cost and its age because I did not have time to look up the serial numbers to see when it was built and also age and price and then looking at the machine --

"Q What price?

"A The original cost.

"Q The original cost of the machine?

"A Yes.

"Q Yes?

"A And after that I developed a figure which would be compatible with its present market value as related to its original cost as indicated on the list.

"Q How did you develop that figure?

"A My experience in seeing a machine and being able to make a determination as to its value.

"Q You did that with respect to each specific piece of equipment, I take it?

"A Yes, but, in addition to that, items that were not on the list.

"Q But you made that kind of an appraisal with respect to each of the items of equipment which was on the list?

"A Right.

"Q That is, on the Plaintiff's Exhibit 2 for identification list?

"A Yes."

Now, on page 90, your Honor, line 22:

"Q Do I take it that the Hauzner 2-spindle profile miller was also standard machine shop equipment?

"A Standard precision Swiss machine.

"Q I see. That is a precision Swiss machine?

"A That is right.

"Q In other words, it is not standard machine shop equipment?

"A It is standard but I believe it is Swiss manufactured.

"Q In arriving at your appraisal of the value of that type of a machine, of that specific machine, were you able to do that from your knowledge of what such machines sell for at auction in the United States?

"A Not from any knowledge that I had of auction sales pertaining to this equipment.

"Q How did you arrive at your evaluation for this equipment?

"A Based on the fact that it was a Swiss machine, that it was very difficult to obtain, knowing the new price, knowing the condition, knowing the age, I was able to make a determination as to its value.

"Q You checked each one of these machines to see its condition?

"A Oh, yes.

"Q How did you determine what condition it was?

"A Well, to an experienced eye, you can look at a machine and see pretty well its physical condition.

"Q Did you do anything else to determine its condition?

"A Only visually.

"Q You mean only by looking at the machine?

"A Yes.

"Q Were these machines operating at the time that you were there?

"A They were all idle.

"Q You did not turn them on?

"A There would be no purpose to that, unless I used measuring instruments to determine the accuracies.

"Q But you did not turn them on?

"A No, I did not.

"Q How did you determine the original cost of, say,

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this Hauzner 2-spindle profile miller?

"A It is indicated on the list.

"Q On Plaintiff's Exhibit 2 for identification?

"A Right.

"Q And that was what you relied on?

"A That is right.

"Q Did you make any other effort at any time to ascertain what the original cost of that machine was?

"A Yes.

"Q When did you do that?

"A I did it on two occasions.

"Q When?

"A One was when I had a meeting with Mr. Dunke.

"Q Who is Mr. Dunke?

"A The president of Hirschmann & Company.

"Q When did you have that meeting?

"A To the best of my recollection it was around in June, sometime.

"Q June of what year?

"A 1969.

"Q What was the other occasion on which you tried to determine the original cost of those machines?

"A I went to the machine tool show in Paris.

"Q When?

"A In July.

"Q Of what year?

"A 1969.

"Q Were they showing those machines?

"A Yes. The Swiss manufacturers were represented there.

"Q With respect to the machines, these ~~Hauzner~~ Hauser 2-spindle profile millers which are on this list in Plaintiff's Exhibit 2 for identification, were the machines which they were showing in Paris in 1969 the same machines or were they different, more up-to-date models?

"A The design and principle were the same.

"Q But the original cost of the machines which you tried to ascertain in 1969 on these two occasions with the president of the Hirschmann & Company and the Paris show, were they the prices of the current models that you asked about or were they the prices of the former models?

"A They were the prices of the current models.

"Q Apart from these two occasions, which you say you tried to ascertain the prices of the current models of the ~~Hauzner~~ Hauser 2-spindle profile millers in 1969, was there any other occasion on which you attempted to ascertain the original cost of the machines that were in the Time & Micro plant?

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"A There was no need to go beyond the information that I had already acquired.

"Q Mr. Thaler, I just want, you know, to box in this in terms of knowing whether there was any other occasion on which you did it. I am not asking you whether there was any need. I just want to know, yes or no, was there any other occasion on which you tried to find out the original cost of the machines in the Time & Micro plant.

"A My answer was that I had enough information not to make any more investigations as to the values.

"Q Then I take it that that means you did not make any other investigations as to the original cost of the machines in the Time & Micro plant?

"A That is right.

"Q And that, as you have already testified, you got the original cost figures of the machines in the Time & Micro plant from Plaintiff's Exhibit 2 for identification?

"A Right.

"Q Mr. Thaler, would you please describe for us the process which you followed at the Time & Micro plant in viewing and appraising the machines?

If I may refer to the testimony that you have already given.

Mr. Thaler, would you please describe for us the

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process which you followed at the Time & Micro plant in viewing and appraising the machines, if I may refer to the testimony that you have already given, do I understand that what you did was to go from machine to machine with the Exhibit 2 list in hand and view each machine and it was then at that time that you made these red-ink notations on the list?

"A Yes.

"Q The red check marks I take it indicate that the machine was there.

"A And that I saw it.

"Q And that you saw it.

"A Yes.

"Q Were the inventory numbers on the machines themselves?

"A Yes.

"Q In each case, Mr. Thaler, did you make sure that the inventory number on the machine checked out with the inventory number which was on the list?

"A Yes.

"Q And that the machine itself corresponded with the description which was next to the inventory number on the Exhibit 2 list?

"A That is correct.

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"Q I take it that that took quite a bit of time to do.

"A Until 10 o'clock that night.

"Q Until 10 o'clock that night?

"A Yes.

"Q That was to go through the entire list of equipment in the manner that you have described?

"A That is right."

THE COURT: We are going to close today at 4 o'clock.

MR. GARTNER: Thank you, your Honor.

Page 106, your Honor.

MR. GARTNER: "Q Apart from what you have told us now, Mr. Thaler, did you do anything else in arriving at your appraised values before you gave that figure to Mr. Klein?

"A I did nothing else but tally the figures.

"Q Again, apart from what you have told us, Mr. Thaler, was there any other source of information which you had in arriving at your appraisal figures?

"A My determination was made on the day when I made the appraisal

"Q There was no other source of information that you used in making those appraisal figures?

"A No. There was no need for anything in addition to what I had.

"Q Did you receive any information by word of mouth from anybody with respect to the value of the machines on the day that you were making the appraisal?

"A I did not consult anyone.

"Q And you received no information in written form on the day that you were making the appraisal?

"A No, sir.

"Q With respect to the value of the machines?

"A No."

THE COURT: That is added on to the prior part of the question, I suppose.

MR. GARTNER: Yes, your Honor.

Now, page 132, your Honor, line 19.

"Q Do you customarily, Mr. Thaler, go to your office on Saturday?

"A Not customarily.

"Q Can you tell from your day book whether you were in your office on August 13?

"A I would have a record of that. On August 13 I was at my son's house.

"Q I see. Can you tell from the day book whether you were in your office on Sunday, August 14?

"A I was at my brother's house.

"Q And not in your office?

"A No.

"Q Would you please, Mr. Thaler, tell me whether on August 15, when you were at the Time & Micro plant, you spent all of your time in the main plant or did you go to some other portion of the premises?

"A Because the main plant contained the major part of the equipment, I spent more time there. But I also went to a warehouse where I saw equipment which was not installed; it was stored.

"Q Was that at the Pequa plant?

"A Yes. I believe that is the name. They only have one other plant besides this. It was like a warehouse.

"Q I see.

"A Yes.

"Q And you say the equipment there was stored?

"A Yes.

"Q Was the equipment boxed?

"A No. It was just stored as surplus equipment.

"Q And you examined the equipment there, too?

"A To the best of my belief. I would like to make, in addition to the statement that I just made:

Some portion of the equipment as I recall, was installed there.

"Q Was there any equipment which was in boxes?

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"A It was in crates.

"Q Did you open those crates?

"A I did not have to open them. I was able to see the equipment without opening the crates.

"Q How were you able to do that?

"A Because there is space between the wood.

"Q Are you referring to the slats?

"A The wood slats, yes.

"Q Is there any notation on here as to which of the equipment was so boxed or crated, or is that not indicated?

"A No, that is not indicated. There is no indication, no marking as to whether the machinery was in the warehouse or --

"Q Whether it was crated, installed or in the warehouse?

"A That is right.

"Q There is no indication of that?

"A No.

"Q When I say is there any indication here in the record I mean Plaintiff's Exhibit 2 for identification.

"A No, not to my knowledge."

Now, I would like to go to page 140, your Honor.

MR. STREAM: Just a second, Mr. Gartner.

All right.

MR. GARTNER: Line 19, your Honor, page 140.

THE COURT: Wait until I find it.

MR. GARTNER: "Q Then, apart from this exhibit, Plaintiff's Exhibit 2 for identification, there were no other papers or records which you used in making your appraisal?

"A Yes.

"Q Is the answer that there were no other?

"A Yes, there were no other.

"Q You consulted no other materials?

"A I didnot get your question.

"Q You consulted no other materials in the course of the appraisal?

"A Consulted, did you say?

"Q Consulted, yes. Did you look at any other materials in making your appraisal?

"A Nothing other than what is contained in the plant and the warehouse.

"Q I mean, you looked at no books, no papers of any kind?

"A No."

I would like to go to page 149, your Honor, line 14.

"Q Did you have any other conversation with Mr. Klein between the time that you talked to him on the night of August 16 and the time that you sent the telegram of August 17?"

MR. STREAM: Not "of," but "on."

MR. GARTNER: Sorry, "on August 17."

"A I don't recollect having had any conversation with him between these two days.

"Q Does your day book indicate any conversation with him on August 16?

"A On August 16 there is a memorandum here that at

3 o'clock I was to call Mr. Howard Klein.

"Q I believe you testified that the chances were that if there was such a notation you probably did call him?

"A I would assume that that would be the case."

Page --

MR. STREAM: May I ask counsel, in order to finish the thought, to read the next question and answer.

THE COURT: What page?

MR. GARTNER: Certainly, page 150.

"Q Do you have any recollection now about what you talked about with him in that conversation, bearing in mind that the telegram, which is Plaintiff's [illegible]t 4 for identification, was sent on the 17th?

"A No."

MR. STREAM: Thank you.

MR. GARTNER: Thank you, Mr. Stream.

Page 154, line 15 --

THE COURT: 154, line 15?

MR. GARTNER: Sorry, your Honor, going back to --

THE COURT: I thought you had all these lines checked, counsel.

MR. GARTNER: Page 150 line 22.

THE COURT: Yes.

MR. GARTNER: "Q Mr. Thaler, in your telegram of

August 17 to Ajax you say that the plant equipment is in excellent" --

THE COURT: Wait a minute, I am lost What page?

MR. GARTNER: Page 150, line 22.

THE COURT: All right.

MR. GARTNER: "Q You say that the plant equipment is in excellent condition. You further say that the machinery contained therein is mainly of Swiss manufacture and is not available to American manufacturers unless they are members of the trust. Where did you get that information from? How were you aware of the fact that this machinery was not available to American manufacturers?

"A Mr. Haakenson advised me of the difficulties in obtaining such equipment from Switzerland because there is a syndicate that controls the importation of this equipment to the United States and if they are members of such a syndicate the delivery schedules are between two and three years from the date of the order.

"Q What is this syndicate?

"A The syndicate is a group of Swiss watch manufacturers who control the shipment of watch making machinery to the United States and other areas in order to prevent or eliminate or obstruct any foreign watch manufacturers to compete with Swiss watch manufacturers.

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"Q' Do you know that of your own knowledge?

"A No, I don't.

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"Q You relied entirely upon Mr. Haakenson?

"A Not entirely.

"Q What else did you rely on?

"A I want to get the date?"

The answer continues:

"Sometime during the late '30's or early '40's I had a matter of business with Ard Bulova and we were riding from the plant where I took him, I believe, to look for some equipment, to his office and he then told me the difficulty that he had in importing Swiss gear cutting equipment and Swiss screw machines and he --

"Q Mr. Bulova is dead, is he not?

"A Yes, Ard Bulova is dead.

"Q Yes. Will you continue?

"A He asked me what I could do.

"Q Excuse me, I really don't want you to relate any more of a conversation with a dead man. Was there any other knowledge or experience on which you relied in making this statement that there was a Swiss trust?

"A Principally on the enlightenment that was mine from Mr. Haakenson.

"Q Apart from Mr. Haakenson and Mr. Bulova, that you have mentioned, was there any other source of information that you had?

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"A No, only of my own knowledge, that machinery in general was very difficult. New machinery was very difficult to come by.

"Q Swiss or American?

"A Swiss or American.

"Q Or any other?

"A Well, particularly Swiss or American.

"Q As far as your statement that the delivery of this type of machinery, that is, the machinery of Swiss manufacture ranging between two and three years, even if the American manufacturers are members of the trust, of the Swiss trust, where did you get that information?

"A From Mr. Haarkenson.

"Q Did you have any other source of that information?

"A No.

"Q Your statement that manufacturers in this country would pay important premiums over and above the values as established if this were made available to them; what is that based on?

"A It is based on the fact that this is a complete unit for the manufacture of precision instruments and --

"Q I am sorry, you misunderstood. I am asking you, Mr. Thaler, where did you derive the information which

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led you to say that American manufacturers would pay premiums? Did you consult any American manufacturers?

"A From my own experience, we know that at our auction sales manufacturers who attended were willing to pay premiums for individual machines, but if they wanted a complete unit for the production of precision instruments, or fuses this was an intact plant that they could push a button and get it started and they would be very pleased to have had an opportunity to buy such a plant without having to spend years in accumulating this equipment.

"Q When you say that your experience at your auction sale persuaded you that manufacturers did or would pay premiums for individual machines, you were talking about premiums over your appraised values?

"A Premiums beyond any appraised values.

"Q Did you in fact, Mr. Thaler, consult with any American manufacturers to determine whether they would pay premiums for individual pieces of this equipment, or for all of the equipment?

"A I had no reason to consult with anybody.

"Q You did not consult with anybody?

"A No.

"Q And Mr. Haakenson did not tell you what American manufacturers would pay premiums?

"A No.

"Q Did you at any time tell Mr. Klein or anyone else in Ajax that part of the basis of your appraisal, or at any rate part of the basis of some of his statements which you made in your communications were statementsmade to you by Mr. Haakenson?

"A No."

THE COURT: It is 4 o'clock.

MR. GARTNER: I have quite a bit more to read, your Honor.

THE COURT: Yes, unfortunately you do have, but we are going to recess tonight. It is Friday night.

We will recess to 10 o'clock Monday morning.

MR. GARTNER: Thank you, your Honor.

THE COURT: Good night members of the jury.

(The jury left the courtroom.)

THE COURT: It has been suggested, Mr. Gartner, that all exhibits be left with the clerk here.

MR. GARTNER: I don't see why.

THE COURT: Is there any objection?

MR. GARTNER: I don't see why.

THE COURT: For one reason, I would like to see them.

MR. GARTNER: I would be glad to furnish copies, but I would like to work with them.